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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF DISAPPEARANCES AND SUMMARY EXECUTIONS

Report of the Working Group on Enforced or Involuntary Disappearances

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CONTENTS

		Paragraphs	Page
Executive summary			3
Introduction		1 - 9	5
I.	ACTIVITIES OF THE WORKING GROUP IN 2000	10 - 32	6
A.	Meetings	10 - 15	6
B.	Communications	16 - 20	7
C.	Methods of work	21 - 23	7
D.	Comments on the draft international convention on the protection of all persons from enforced disappearance	24	8
E.	Implementation of the Declaration on the Protection of All Persons Persons from Enforced Disappearance: general comment on article 17 of the Declaration	25 - 32	8
II.	COUNTRIES WITH NEW CASES OF DISAPEARANCES OR CLARIFICATIONS	33 - 105	10
III.	COUNTRIES REGARDING WHICH THE WORKING GROUP RECEIVED COMMENTS FROM GOVERNMENTS OR NON-GOVERNMENTAL ORGANIZATIONS	106 - 116	23
IV.	COUNTRIES FROM WHICH THE WORKING GROUP RECEIVED NO INFORMATION OR COMMENTS	117 - 118	25
V.	CONCLUSIONS AND RECOMMENDATIONS	119 - 126	26
VI.	ADOPTION OF THE REPORT	127 - 128	27

Annexes

I.	Statistical summary: cases of enforced or involuntary disappearances reported to the Working Goup between 1980 and 2000	28
II.	Decisions on individual cases taken by the Working Group during 2000	31
Iii.	Comments on the draft international convention on the protection of all persons from enforced disappearance	33

Executive summary

The practice of enforced or involuntary disappearances continues in a number of countries. During 2000, the Working Group* transmitted 487 new cases of disappearances which occurred in 29 countries; 120 of these cases occurred in 2000. At the moment, the Working Group has 45,998 outstanding cases on its registers. During 2000, 95 cases were transmitted by the Working Group to the Governments of 20 countries by way of its urgent action procedure. The highest number of cases of enforced or involuntary disappearances in 2000 occurred in Indonesia (29) and India (21).

The process of clarification of cases, especially cases which were transmitted more than 10 years ago, is becoming slower. In spite of cooperation with the Working Group from a large number of countries, the fact remains that the attitude of most Governments towards investigating and clarifying the outstanding cases has not improved. In 2000, out of 24 countries with unclarified cases, the countries which have not communicated at all with the Working Group are as follows: Afghanistan, Bangladesh, Burkina Faso, Burundi, Cambodia, Cameroon, the Congo, Equatorial Guinea, Greece, Kuwait, Lao People's Democratic Republic, Mauritania, Mozambique, Namibia, Seychelles, Uzbekistan and Zimbabwe.

Within this context, the Working Group wishes to express its great appreciation to the Government of Sri Lanka for its intense activities to clarify the outstanding cases. During 2000, the Government sent to the Working Group more than 6,000 responses to cases for clarification, most of them with legal certificates of presumption of death and indications of compensation given to the families, in accordance with the Working Group's mandate and its methods of work.

In its report, the Working Group recommends to the Commission on Human Rights that it should call upon all the States with outstanding cases of enforced or involuntary disappearances to adopt more adequate measures to speed up the process of clarification of cases.

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* Since its creation in 1980, the Working Group has submitted a report annually to the Commission on Human Rights, starting at the Commission's thirty-seventh session. The document symbols of the previous 20 reports are as follows: E/CN.4/1435 and Add.1; E/CN.4/1492 and Add.1; E/CN.4/1983/14; E/CN.4/1984/21 and Add.1 and 2; E/CN.4/1985/15 and Add.1; E/CN.4/1986/18 and Add.1; E/CN.4/1987/15 and Add.1 and Corr.1; E/CN.4/1988/19 and Add.1; E/CN.4/1989/18 and Add.1; E/CN.4/1990/13; E/CN.4/1991/20 and Add.1; E/CN.4/1992/18 and Add.1; E/CN.4/1993/25 and Add.1; E/CN.4/1994/26 and Add.1 and Corr.1 and 2; E/CN.4/1995/36; E/CN.4/1996/38; E/CN.4/1997/34; E/CN.4/1998/43; E/CN.4/1999/62 and Add.1 and 2; and E/CN.4/2000/64 Corr. 1 and 2 and Add.1. The relevant resolution of the Commission adopted at its fifty-sixth session is resolution 2000/37.

The report also points out that impunity continues to be one of the main causes of disappearances and also the major obstacle in the process of clarification of cases. The Working Group reiterates that the Declaration on the Protection of All Persons from Enforced Disappearance obliges all States to declare all acts of enforced disappearance as offences in their domestic criminal law, to investigate promptly and thoroughly all allegations of enforced disappearance and to bring the perpetrators to justice.

The Working Group expresses again its serious concern about its inability, with the present limited financial resources and seriously limited staff, to carry out in the future the various tasks assigned to it by the Commission.

Introduction

1. The present report of the Working Group on Enforced or Involuntary Disappearances is submitted pursuant to Commission on Human Rights resolution 2000/37.

2. In addition to its original mandate, which is to act as a channel of communication between the families of disappeared persons and the Governments concerned, with a view to ensuring that sufficiently documented and clearly identified individual cases are investigated and the whereabouts of the disappeared persons clarified, the Working Group has been entrusted by the Commission with various other tasks. In particular, the Working Group is to provide appropriate assistance in the implementation by States of the Declaration on the Protection of All Persons from Enforced Disappearance (hereafter referred to as the Declaration) and of the existing international rules.

3. The number of countries with outstanding cases of alleged disappearance was 73 in 2000. During the period under review, the Working Group transmitted 487 new cases of disappearance to 29 countries, 120 of which allegedly occurred in 2000. The total number of cases transmitted by the Working Group to Governments since the Group's inception stands at 49,[5]16. The total number of cases being kept under active consideration, as they have not yet been clarified, now stands at 45,998.

4. As in previous years, the Working Group has continued to apply the urgent action procedure in cases that allegedly occurred within the three months preceding the receipt of a complaint. This year the Working Group sent urgent action appeals in respect of 95 cases to the Governments of 20 countries.

5. The Working Group regrets that out of the 24 countries with unclarified cases, the Governments of 17 countries have not communicated at all with the Group during the period under review.

6. As in the past, the present report reflects only communications or cases examined before the last day of the third annual session of the Working Group, which was 24 November 2000. Urgent action cases which may have to be dealt with between that date and the end of the year, as well as communications received from Governments and processed after 24 November 2000, will be reflected in the Working Group's next report.

7. Owing to serious limitations in its staff and resources, together with the requested reduction of pages of this report, the Working Group has not been able to include in the present report some very important sections.

8. During the last few years the Working Group has faced very serious shortages in the staff servicing its mandate, rendering it almost impossible for the Group to complete all its tasks in an adequate manner. Therefore, the Working Group again expresses serious concern about its ability, with the present limited financial and human resources, to carry out in the future the various tasks assigned to it by the Commission on Human Rights. The Working Group again expresses its deep appreciation of the work of its staff, which was carried out in spite of the difficulties referred to above.

9. In accordance with the directive received by the Working Group from the General Assembly, (resolutions 37/14 C of 16 November 1982 and 47/202 B of 22 December 1992) to reduce the length of its reports, the following format was established in 1999:

Category A: Countries with new cases of disappearances or clarifications;

Category B: Countries regarding which the Working Group received comments from Governments and non-governmental organizations;

Category C: Countries regarding which the Working Group received no information or comments.

I. ACTIVITIES OF THE WORKING GROUP IN 2000

A. Meetings

10. The Working Group held three sessions in 2000. Its sixtieth session was held at United Nations Headquarters from 24 to 27 April, and the sixty-first and sixty-second sessions were held at the United Nations Office at Geneva from 21 to 25 August and from 15 to 24 November, respectively. During these sessions, the Working Group met with official representatives of the Governments of Angola, Belarus, Lebanon, Mexico and the Sudan.

11. In addition, the Working Group met with representatives of human rights organizations, associations of relatives of missing persons, and families or witnesses directly concerned with reports of enforced disappearances.

12. By letter dated 19 November 1997, the Government of the Islamic Republic of Iran invited the Working Group to visit that country. The Working Group accepted the invitation and a mutually convenient date is being sought. By letter dated 25 August 2000, the Working Group asked the Government of the Islamic Republic to suggest possible dates for such a visit.

13. As reported last year (E/CN.4/2000/64, para. 12), to date the Working Group has received no reply from the Government of Iraq to its letter dated 21 July 1995 requesting a visit.

14. By letter dated 25 August 2000, the Working Group expressed to the Government of Algeria its interest in visiting that country. The Working Group considers that the visit could contribute to the current efforts being carried out to determine the fate or whereabouts of the persons reported as disappeared, as well to preventing new cases. A reply is still awaited.

15. On 30 March 1995, the Government of Colombia invited the Working Group to visit the country. Unfortunately, a mutually acceptable date for the visit could not be set. The Working Group has asked the Government of Colombia again to suggest possible dates for the visit.

B. Communications

16. During the period under review, 4 December 1999 to 24 November 2000, the Working Group transmitted 487 new cases of enforced or involuntary disappearance to the Governments of Algeria, Argentina, Belarus, Burundi, Cameroon, Chad, Colombia, the Congo, the Democratic Republic of the Congo, Ethiopia, India, Indonesia, Lebanon, Mexico, Morocco, Namibia, Nepal, Pakistan, Peru, the Russian Federation, Rwanda, Sri Lanka, Turkey, Ukraine, the United Republic of Tanzania, Uzbekistan, Venezuela, Yugoslavia and Zimbabwe. Of these, 95 cases were sent under the urgent action procedure.

17. Of the newly reported cases, 120 allegedly occurred in 2000 and relate to Algeria, Argentina, Colombia, the Democratic Republic of the Congo, India, Indonesia, Mexico, Morocco, Nepal, Pakistan, Peru, the Russian Federation, Rwanda, Sri Lanka, Ukraine, the United Republic of Tanzania, Uzbekistan, Yugoslavia and Zimbabwe.

18. During the same period, the Working Group clarified 531 cases concerning Algeria, China, Chile, Colombia, the Democratic Republic of the Congo, India, Mexico, Nepal, Peru, the Russian Federation, the United Republic of Tanzania, Sri Lanka and the Sudan.

19. As in previous years, the Working Group received reports and expressions of concern from non-governmental organizations, associations of relatives of disappeared persons and from individuals about the safety of persons actively engaged in the search for missing persons, in reporting cases of disappearance or in the investigation of cases. In some countries, the mere fact of reporting a disappearance entailed a serious risk to the life or security of the person making the report or to his or her family members. In addition, individuals, relatives of missing persons and members of human rights organizations were frequently harassed and threatened with death for reporting cases of human rights violations or investigating such cases.

20. The Working Group continues to address itself to the ever-increasing number of United Nations field operations with human rights components and field offices of the Office of the High Commissioner for Human Rights, in an effort to take advantage of their unique position on the ground in order to improve its information flow with regard to disappearances.

C. Methods of work

21. During its sixty-second session, the Working Group met with the representatives of several non-governmental organizations at their request to discuss and or review its methods of work. The NGO representatives stated that the Working Group should strengthen its dialogue and working relations with the associations of relatives of missing persons and other human rights organizations in order to attain the common objective of eradicating enforced disappearance. When the Working Group did not accept a case, it should write to the source explaining that the information received did not fulfil the established requirements; in that way the source could complete the report. The Working Group should submit once a year to the sources an updated list of unresolved cases and twice a year, a list of cases communicated to Governments through the urgent action procedure.

22. A number of NGO representatives were of the view that following judicial declarations of presumption of death, efforts should still be made to locate the victim's corpse and carry out a forensic examination as it was part of the humanitarian mandate of the Working Group not only to ensure that the family was informed and compensated, but also to reveal the place of burial to the family.

23. Many representatives of non-governmental organizations, including the Asian Federation against Involuntary Disappearances (AFAD), the Latin American Federation of Associations of Relatives of Disappeared Detainees (FEDEFAM), the International Service for Human Rights and the International Association for Human Rights Nydia Erika Bautista, stated that the Working Group, before deciding to discontinue or clarify a case should make every effort to investigate the reasons behind the action or inaction of the source or the family concerned; there should be tighter restrictions on decisions to discontinue a case because a source has failed to respond. Lastly, they stated that the Working Group should take the initiative with respect to country visits and conduct follow-up missions to countries visited in the past and where specific recommendations were made.

D. Comments on the draft international convention on the protection of all persons from enforced disappearance

24. During its sixtieth session, the Working Group adopted several comments on the draft international convention on the protection of all persons from enforced disappearance (E/CN.4/Sub.2/1998/19, annex) transmitted to the Commission on Human Rights by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1998/25. Those comments were sent to the Secretary-General in accordance with the request contained in Commission on Human Rights resolution 2000/37 (see annex III).

E. Implementation of the Declaration on the Protection of All Persons from Enforced Disappearance: general comment on article 17 of the Declaration

25. With a view to focusing the attention of Governments more effectively on the relevant obligations deriving from the Declaration, the Working Group, in the light of its experience with communications with Governments, decided to adopt general comments on those provisions of the Declaration that might need further explanation.

26. At its sixty-first session, the Working Group adopted the following general comments on article 17 of the Declaration. Article 17 of the Declaration reads as follows:

> "1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.
>
> "2. When the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.
>
> "3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence."

27. Article 17 establishes fundamental principles intended to clarify the nature of enforced disappearances and their criminal consequences. The sense and general purpose of the article is to ensure conditions such that those responsible for acts constituting enforced disappearance are brought to justice within a restrictive approach to statutory limitations. Article 17 is complemented by the provisions of articles 1, 2, 3 and 4 of the Declaration.

28. The definition of "continuing offence" (para. 1) is of crucial importance for establishing the responsibilities of the State authorities. Moreover, this article imposes very restrictive conditions. The article is intended to prevent perpetrators of those criminal acts from taking advantage of statutes of limitations. It can be interpreted as seeking to minimize the advantages of statutes of limitations for the perpetrators of these criminal acts. At the same time, as the criminal codes of many countries have statutes of limitations for various offences, paragraph 2 stipulates that they shall be suspended when the remedies provided for in article 2 of the International Covenant on Civil and Political Rights are no longer effective. The Covenant refers in particular to the possibility of having "an effective remedy" when a human rights violation "has been committed by persons acting in an official capacity".

29. In its decisions the Inter-American Court of Human Rights repeatedly expresses views wholly consistent with the provisions of article 17. In its judgement of 29 July 1988 in the Velásquez Rodríguez case and in the Blake case, the Court derived from the continuing nature of the enforced disappearance itself the obligation upon the State to investigate until the whereabouts of the victim were established (para. 181). In justifying its decision in the latter case, the Court, in its judgement of 2 July 1996, referred explicitly to article 17 of the Declaration (para. 37). In a separate opinion, Judge Antonio Cancado Trindade, who concurred with the content and sense of the judgement, said that the offence was a "continuing situation" inasmuch as it was committed not instantaneously but continously and extended over the entire period of the disappearance (para. 9); the separate opinion cites cases of the European Court of Human Rights in which the idea of a "continuing situation" also was considered (De Becker v. Belgium (1960) and Cyprus v. Turkey (1983)).

30. To the international jurisprudence, which on several occasions refers to article 17, must be added the proceedings of national courts which, on the basis of the same interpretation, have assumed jurisdiction over acts of enforced disappearance, including within the context of amnesties. During the course of 2000, several judicial proceedings have been instituted in Chile, for example, concerning cases of enforced disappearance that occurred before the 1978 Amnesty Act, precisely on the basis of the assumption that the notion of a "continuing situation" is inherent in the very nature of enforced disappearance.

31. Owing to the seriousness of acts of enforced disappearance a number of irrevocable rights are infringed by this form of human rights violation, with obvious consequences in criminal law. Recent developments in international law require clear priority to be given to action against the serious forms of violations of human rights in order to ensure that justice is done and that those responsible are punished. Thus, according to article 1 (2) of the Declaration, "Any act of enforced disappearance ... constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life".

32. The interpretation of article 17 must be consistent with the provisions of articles 1 (1), 2 (1), 3 and 4 of the Declaration, which seek to punish these crimes severely in order to eradicate the practice. This explains and justifies the restrictive approach to the application of statutes of limitation to this type of offence. Thus, article 1 (1) stipulates that "Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field". For its part, article 2 (1) specifies that "No State shall practise, permit or tolerate enforced disappearances", while, according to article 3, "Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction". The need for severe punishment is clearly established in article 4 (1) which reads: "All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness".

II. COUNTRIES WITH NEW CASES OF DISAPPEARANCES OR CLARIFICATIONS

Algeria

33. The Working Group transmitted 217 newly reported cases to the Government, none of which occurred in 2000. During the reporting period, the Working Group clarified two cases on the basis of information previously submitted by the Government on which no objection was received from the source. In both cases the persons concerned were killed during armed confrontations with security forces. Their corpses were buried in Magra cemetery, Wilaya, an administative decision, of M'sila and in the cemetery of Bougaa.

34. The Working Group received information from non-governmental organizations concerning non-compliance by the Government of Algeria with provisions of the Declaration. It was said that impunity remained a major concern. Despite promises made in 1998 by the Government, no concrete measures were taken by the authorities to investigate the fate or whereabouts of the persons disappeared since 1992, or to bring those responsible to justice. The Working Group was also informed that the security forces broke up violently demonstrations organized by mothers of the disappeared. However, there were fewer reports of prolonged incommunicado detention beyond the 12-day limit permitted by law.

35. Concern was also expressed regarding the fact that a large number of wives of disappeared persons could neither legally prove that their husbands were dead nor enjoy their status as married women. It was said that it was necessary to simplify the legal procedure for the declaration of presumption of death, so that spouses can obtain custody of their children and dispose of property to which they are entitled.

36. The Government also provided information on 157 cases. The responses were diverse: the missing persons had not been questioned, apprehended or arrested; investigations were continuing to locate the missing persons; the missing persons had been released after having served a sentence; and the missing persons were wanted by the security services because of their

involvement in criminal activities. In one case the Government reported that the missing person had been found in prison but did not provide any details about the location of the prison. The Government reiterated its willingness to continue to cooperate with the Working Group.

Argentina

37. During 2000, the Working Group transmitted two newly reported cases of disappearance to the Government, both of which occurred in March 2000 and were sent under the urgent action procedure. The two cases concerned persons who were arrested in the city of Mendoza by members of the local Police Investigation Office (Dirección de Investigaciones de la Policía). One of them had previously received death threats from a member of the local Police Investigation Office.

Burundi

38. The Working Group transmitted one newly reported case of enforced disappearance to the Government which occurred in 1996. The case concerns a teacher who was reportedly abducted by agents of the security services and taken away to an unknown destination.

Cameroon

39. The Working Group transmitted three newly reported cases of disappearance to the Government which occurred in September 1995. The cases concern three members of the Southern Cameroon National Council who were detained by members of the National Gendarmerie Brigade of Mbango and taken away to an unknown destination.

Chad

40. During the period under review, one new case of disappearance was transmitted by the Working Group to the Government. It concerns a person who was arrested on 26 December 1999 in N'Djaména by members of the Groupement de la sécurité présidentielle. No information was provided by the Government concerning this case.

Chile

41. The Working Group clarified four cases on the basis of information previously submitted by the Government on which no observations were received from the source within the period of six months. The corpses of the victims were exhumed and identified by experts of the Forensic Medical Service and were handed over to their relatives for burial. Some of the victims were killed in the context of repression known as the "Death Caravan". According to the Government's statement, General Sergio Arellano Stark, in his capacity as Delegate of the Commander-in-Chief of the Army and of the Governing Junta, led a group of officers who flew to various cities in the country in a helicopter and killed a total of 72 persons in extrajudicial executions devoid of any legal process. Other corpses exhumed could not immediately be identified owing to their advanced state of decomposition, although DNA tests will be carried out.

42. The Government reported that 108 tombs had been excavated in plot 29 of the public cemetery of Santiago, revealing 125 skeletons which were handed over to the Forensic Medical Service. As a result of the relevant examinations, 94 corpses have been identified to date, allowing the deaths to be officially recorded; 18 are skeletons of persons who died in 1973. In these cases the relatives either did not know that they had been buried in plot 29 or were not given the remains for burial. Thirty-one other skeletons are still to be identified.

43. Special concern was expressed by several non-governmental organizations regarding the continued applicability of the 1978 Amnesty Act, the extensive jurisdiction of military courts and the inadequate progress achieved in investigations into cases of enforced or involuntary disappearances which had occurred during the military rule. Although some progress was reported in the year 2000, much remained to be done to establish the truth regarding the fate and whereabouts of the disappeared persons.

44. Concern was also expressed regarding death threats and acts of intimidation and harassment against members of associations of relatives of disappeared persons and non-governmental organizations, such as the Agrupación de Familiares de Detenidos Desaparecidos and the Corporación de Promoción y Defensa de los Derechos del Pueblo.

China

45. No new cases of disappearance were transmitted by the Working Group to the Government. The Working Group clarified two cases on the basis of information previously submitted by the Government on which no observations had been received from the source. One concerns an ethnic Tibetan, a former deputy editor of a publishing house, who was detained in January 1997 on suspicion of espionage. He was found not guilty and was released on the spot and is now living at liberty. The other person was found serving his sentence in the Tibet Autonomous Region Prison after having been found guilty of separatist activities.

Colombia

46. The Working Group transmitted 15 newly reported cases to the Government. During the same period, the Group clarified 22 cases on the basis of information provided by the Government on which the sources did not make any observations during the six-month period. In 17 cases, the missing persons were released by their captors, members of paramilitary groups, and were living at liberty. In two other cases, the corpses of these persons were found. Three other persons were handed over to a commission of the International Committee of the Red Cross (ICRC) in Doradal, Department of Antioquia.

47. The newly reported cases transmitted occurred in 2000 mainly in Finca La Galleta, Montebello, Department of Antioquia; Minitas, Granada, also in the Department of Antioquia; Bugalagrande, Department of Cauca; Cabito, Bajo Baudo, Department of Choco and in the Department of Santander. Most of the abductions and detentions leading to disappearances were carried out by members of paramilitary groups whose actions were believed to have been either undertaken in complicity with, or supervised by members of the security forces, very often in areas of heavy military presence. One victim was a leader of the Bugalagrande Township Workers' Union (SINTRAMUNICIPIO). Another victim was the President of the Colombian

University Workers and Employees Union (SINTRAUNICOL). Other victims were a leading member of a teachers' union, a member of the indigenous community of Embera-Katio, and two members of the Association of Families of Disappeared Persons.

48. During the period under review, the Government made reference to 22 outstanding cases. Most of the communications contained details of legal proceedings carried out by various authorities dealing with the cases or requests for additional information. In several cases the Government reported that the officer assigned to the case had ordered the provisional suspension of the investigation on the grounds that it had not been possible to identify those responsible or to locate the whereabouts of the missing person. The Government also reported that the Congress had approved a bill which defined the crime of enforced disappearance and established severe penalties.

49. The Working Group was informed by several non-governmental organizations that the practice of impunity persisted in Colombia. Officers of both the armed forces and the police forces, and especially personnel belonging to paramilitary organizations acting with the consent or approval of the security forces, continued to commit serious human rights violations, particularly enforced disappearances, in the course of operations conducted against drug traffickers and against armed opposition groups, such as the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN). Paramilitary organizations like the self-styled United Self-Defence Groups of Córdoba and Urabá were continuing their activities, despite the fact that they had been declared illegal in 1989 and that the Government had issued express orders to the armed forces to fight and neutralize them.

50. Concern was also expressed for the safety of members of human rights organizations, particularly ASFADDES and the Andean Commission of Jurists Colombian Section, who were still exposed to acts of intimidation, harassment and reprisals.

51. It was also reported that little progress had been achieved in the clarification of cases of enforced or involuntary disappearance. Investigations carried out by the Department of Public Prosecution and the courts tended to be closed when it proved impossible to identify the perpetrators. Thus, few of those responsible for acts of enforced disappearance had ever been brought to trial.

52. Lastly, non-governmental organizations also reported that the Government had failed to follow up most of the recommendations put forward by the Working Group during its visit to Colombia in 1988, particularly those referring to the habeas corpus remedy and the continued practice of investigation and judgement of cases of enforced disappearances by military courts.

Congo

53. The Working Group transmitted 31 newly reported cases of disappearance to the Government, all of which occurred between May and August 1999. Most of them concern people who were separated from a convoy returning to Brazzaville from the Democratic Republic of the Congo and taken by members of the security forces for interrogation. Their whereabouts remain unknown. Other victims were arrested by police officers at their homes in the presence of their relatives and taken to an unknown destination.

Democratic Republic of the Congo

54. The Working Group transmitted a new case of disappearance to the Government under the urgent action procedure. It concerns the disappearance of the Archbishop of Bukavu after being detained at Goma airport in February 2000 upon returning from Kinshasa. The case was subsequently clarified on the basis of information submitted by the source reporting that the person had been released.

Ethiopia

55. The Working Group transmitted one newly reported case of disappearance to the Government, which allegedly occurred in 1995. It concerns an Ethiopian student who was detained by the armed forces.

India

56. The Working Group transmitted 27 newly reported cases to the Government, 21 of which occurred in Kashmir in 2000. Four persons allegedly disappeared after having been detained in Assam, one in Sipajhar and one in Udalguri. In one case, the Guwahati High Court ordered the army authorities to hand over the detainee to the police and produce him before a magistrate. The order was not respected. Two of the missing persons were reportedly seen in detention and being tortured in the 15th Dogra Regiment Camp and in the Dhekiajuly Army Camp.

57. The Government provided information on nine cases. Three cases were subsequently considered clarified given that the sources made no observations to the responses provided by the Government. In one case the corpse of the missing person had been found and handed over to his legal heirs for last rites. In two cases the disappeared persons had been released on bail and were residing at their homes. In five cases the information provided by the Government was considered insufficient to consider them clarified. Another case was made subject to the six-month rule.

58. During the period under review, information concerning developments in India having an influence on the phenomenon of disappearance and the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance was received from non-governmental organizations. It was reported that the failure by the Government to systematically investigate a pattern of grave human rights violations, including cases of enforced or involuntary disappearance in Punjab during the 1980s and early 1990s, had led to a climate of impunity for officers of the police force as well as to continuing illegal actions by police. It was said that attempts by human rights organizations in Punjab to seek justice for victims of enforced disappearance and their relatives had been met with intimidation, harassment and official obstruction of redress.

59. It was reported that the fate of hundreds of victims of enforced or involuntary disappearance in other parts of India, such as Assam and Manipur, remained unknown. Their relatives continued to fight for justice. Impunity is said to prevail in Manipur. The Assam and Manipur Special Powers Act of 1958 reportedly confers on the armed forces broadly defined virtual immunity from prosecution.

60. There also appeared to be a steady increase in the number of cases of enforced or involuntary disappearance in Jammu and Kashmir, after a decline over the past three years. Many of the victims appear to be ordinary citizens picked up at random, without any connection to the current armed struggle. The victims include businessmen, lawyers, labourers and teachers and people of all ages, including children. Allegations were also received according to which people are being held in long-term unacknowledged detention in interrogation centres and transit camps in Jammu and Kashmir and in the north-east of the country.

61. Lastly, it was said that few of the habeas corpus petitions filed by families of the disappeared before the judiciary have been brought to a final resolution. It was reiterated that the climate of impunity prevailing in Jammu and Kashmir allows those responsible for acts of enforced disappearance to avoid legal consequences and facilitates further human rights violations.

Indonesia

62. The Working Group transmitted to the Government 37 newly reported cases of disappearance, 29 of which occurred in 2000 and 8 in 1999. The cases which occurred in 2000 were sent under the urgent action procedure and took place in Bireun, North Aceh and the subdistrict of Glumpang Tiga, Pidie district, Aceh. Twenty-four persons were detained in Glumpang Tiga after the security forces were attacked by armed civilians. Their detentions were not acknowledged. Two persons were detained after being shot by members of the security forces, who reportedly were conducting a "sweep operation" looking for supporters of the Free Aceh Movement (GAM). Volunteers from the human rights organization People's Crisis Centre were prevented from going to the area of the Matang Kuli subdistrict to investigate the disappearances. Another person was detained by members of the Police Mobile Brigade (BRIMOB) as he was making his way home. Police authorities at the provincial police headquarters acknowledged his detention, but said to his parents that their son had been released. In another incident, the Police Sector Chief of Dewantara denied knowledge of the whereabouts of a person who had been detained by members of BRIMOB because his motorbike had been involved in an armed attack. The cases corresponding to 1999 took place in East Aceh, West Aceh and West Timor.

63. The Working Group was informed that enforced or involuntary disappearances continue to occur in Indonesia, particularly in areas where there are strong independence movements and where security forces engage in counter-insurgency operations, such as Aceh and Papua. It was said that in Aceh, many civilians have been arrested by soldiers and police officers ostensibly trying to capture suspected members of GAM. Between 1989 and 1998, Aceh was designated an area of special military operations (Daerah Operasi Militer, DOM). Although Aceh's DOM status was lifted in August 1998, in December of the same year human rights violations by the army and the security forces escalated once again, following a series of armed attacks. During military operations, many people in military or police custody disappeared.

64. Lastly, it was alleged that relatives of victims of enforced disappearance, as well as human rights defenders and humanitarian workers, have been subjected in Aceh to acts of intimidation, harassment and reprisals.

65. Concerning the situation in Aceh, on 24 November 2000 the Government reported that it is strongly committed to documenting cases of human rights violations, including enforced disappearances, which took place in Aceh both during and after DOM status was invoked for the province. Those suspected of human rights violations would be tried retroactively. On 6 November 2000, the Parliament approved the establishment of a national human rights tribunal. The Government and the Parliament are in the process of granting special autonomous status to the province. The People's Consultative Assembly issued Decree No. IV/MPR/2000 on recommendations regarding policy and implementation of the regional autonomy framework. As a part of its comprehensive approach, the Government and the Free Aceh Movement signed a Joint Understanding on Humanitarian Pause for Aceh on 12 May 2000, which was extended until 15 January 2001. The main goals of the Understanding are to deliver humanitarian assistance to those affected by the conflict and to promote confidence-building measures.

66. The Government reported it had revoked the DOM status of Papua province in August 1998 and was in the process of granting it special autonomous status which will encompass wide-ranging rights of local governance and a greater share in the revenues accrued from the exploitation of the province's natural resources.

Lebanon

67. The Working Group transmitted 18 newly reported cases to the Government which occurred between 1975 and 1985. Those responsible for the disappearances were reportedly the Lebanese army, the security forces and the Falangist militia. Most of the cases occurred in Beirut and its suburbs.

68. During its sixty-second session, a representative of the Government informed the Working Group that the Government had adopted the recommendations formulated by a national commission set up at the beginning of the year to investigate the cases of enforced or involuntary disappearances. Accordingly, 2,046 verified cases of enforced disappearance would be clarified within the existing legal procedures. Judicial certificates of presumption of death would be issued and adequate financial compensation would be paid to the relatives of the missing persons.

Mexico

69. The Working Group transmitted four newly reported cases of disappearance to the Government, two of which occurred in 1999 and two in 2000. All the cases were sent under the urgent action procedure. During the same period, the Working Group clarified nine cases on the basis of information previously provided by the Government on which the sources had not made observations within the six-month period. The Working Group also decided to discontinue consideration of two cases, since the mothers of the missing persons stated their desire not to pursue the issue any further.

70. The newly reported cases occurred in the States of Guerrero, Hidalgo and Mexico. Members of the Judicial State Police and of the Public Security Police were mentioned as responsible.

71. Representatives of the Mexican National Commission on Human Rights met with the Working Group at its sixtieth and sixty-second sessions and reiterated their desire to continue to cooperate with the Group. They reported that between 21 July 2000 and 3 October 2000, a total of 18 working missions had been carried out by the National Commission to 11 States of the Federation. Two investigators had taken part in each visit, which lasted for a period of approximately five days.

72. The Working Group clarified nine cases on which the sources had not made observations within the six-month period. In four cases, it was reported that the persons concerned had been found in detention at the Social Readaptation Centres of Tecpan de Galeana, Guerrero, Coyuca de Catalán, Guerrero, and Acapulco, Guerrero. They had been accused of homicide, kidnapping and carrying unlicenced firearms. Two prisoners stated that they had been physically and psychologically tortured after their arrest and their cases were sent to the Special Rapporteur on the question of torture. Five other persons were found living at liberty.

73. The Working Group was informed that owing to an amendment to article 102, section B, of the Mexican Constitution, the Congress had decided on 11 November 1999 to designate a new President of the National Commission on Human Rights.

74. Special concern was expressed by several non-governmental organizations regarding the perpetuation of the practice of enforced or involuntary disappearance in the States of Chiapas, Guerrero and Oaxaca, especially in the course of the struggle against the insurgency and operations against drug trafficking. It was reported that government forces still had to face sporadic attacks attributed to armed opposition groups, the self-styled Revolutionary Army of the Insurgent People, the Popular Revolutionary Army and the Zapatista National Liberation Army. Complaints were further expressed about the persistence of the practice of arbitrary detentions of short duration, during which detainees were removed from the protection of their relatives and deprived of access to lawyers or doctors. It was emphasized that the practice facilitated the use of ill-treatment and torture against detainees and their subsequent disappearance.

75. Concern was expressed about the impunity allegedly generated by the inefficiency and ineffectiveness of the judicial system and the lack of independence of the Procurator's Office from the executive branch, at both state and federal levels, as well as by the corruption and lack of sufficient training affecting personnel of the Judicial Police. It was said that the true facts of cases were only rarely ascertained, while convictions of those responsible were even fewer.

76. Special concern was also expressed regarding threats and acts of intimidation and harassment against members of associations of relatives of disappeared persons and non-governmental human rights organizations, such as the Eureka Committee and the Miguel Agustín Pro Juárez Human Rights Centre.

77. A positive aspect, and one in conformity with the terms of the Declaration on the Protection of All Persons from Enforced Disappearance, was the modification of the Penal Code of the Federal District, approved by the Legislative Assembly of the Capital (Mexico City) on 19 August 2000, establishing prison sentences of between 15 and 40 years for civil servants or members of the security forces found guilty of enforced disappearances. It was also stated,

however, that no progress had been observed in terms of introducing the offence of enforced disappearance in federal legislation or the establishment of penalties appropriately reflecting the seriousness of such an offence.

Morocco

78. The Working Group transmitted three newly reported cases to the Government, two of which reportedly occurred in Rabat in 1979. Members of the Secret Services were mentioned as responsible. One case reportedly occurred in September 2000 at the airport of Laayoune and was transmitted by the urgent action procedure.

Namibia

79. The Working Group transmitted one newly reported case of disappearance to the Government, which occurred in 1999. It concerns a human rights activist, member of the Namibian National Society for Human Rights, who was detained following the imposition of a state of emergency in the Caprivi region and taken to an unknown destination.

Nepal

80. The Working Group transmitted 35 newly reported cases to the Government, 32 of which occurred between 1998 and 1999 and 3 in 2000. Two of the victims were a civil engineer and member of the All Nepal Nationalities Organization and a lecturer in English at the Nepal Lok campus of Tribhuvan University. They were released from the Central Jail in Kathmandu on the orders of the Supreme Court but were immediately rearrested and forced into a police van outside the jail. The Government reported that these two persons were not under detention.

81. Another victim was rearrested by a group of about 15 police officers in June 2000 at Butwal Appelate Court, immediately after the Court had ordered his release. He was taken away in a vehicle with covered number plates. In another incident, which took place in April 2000, a woman, five months pregnant, was rearrested in Morang prison by members of the police shortly after a chief district officer had ordered her released on bail.

82. Five cases were transmitted under the urgent action procedure. The Working Group decided to consider one case clarified on the basis of information provided by the Government which was subsequently confirmed by the source. Another case was clarified on the basis of information provided by the source according to which the missing person had been released from prison in July 2000 and was now living at liberty.

83. Non-governmental organizations informed the Working Group that the pattern of enforced disappearance which emerged during 1998 had continued. Police officers in civilian clothes were forcing people into vehicles with black-tinted windows and without number plates, taking them to unofficial places of detention like the Maharajgunj Police Training Centre. The victims are suspected members of the Maoist Communist Party of Nepal, which declared a "people's war" in February 1996.

84. Concern was also expressed regarding the use of the Public Security Act, which allows preventive detention for up to 90 days, in order to maintain public order under detention orders issued by local authorities. The Ministry of the Interior can extend this period for a further 90 days and an Advisory Board established under the Act can order a further extension to 12 months. It was alleged that the Public Security Act is being used to justify the repeated rearrest of people suspected of being members or sympathizers of the armed organization called the Communist Party of Nepal (CPN). Several people were rearrested by police on court premises immediately after the court had ordered their release.

Pakistan*

85. One newly reported case of disappearance was sent to the Government. The new case occurred in February 2000 and was sent under the urgent action procedure. It concerns a person who was arrested at Latifabad, Hyderabad, by plain-clothes law enforcement officers and taken to the Gulshan-e-Haali police station. However, the police denied that the individual in question was being detained and his whereabouts remain unknown.

Peru

86. Two new cases were transmitted to the Government, both of which were sent under the urgent action procedure. The two cases were subsequently clarified on the basis of the information provided by the source stating that the missing persons had been found in detention and were subsequently released. The two newly reported cases occurred in June 2000 in Lima.

87. Serious concern was expressed to the Working Group at the number of cases of enforced or involuntary disappearance in Peru in which the fate of the victim remains unknown and in which the perpetrators have not been brought to justice. Concern was also expressed at the lack of investigation and response by the Government concerning the thousands of cases transmitted by the Working Group in the past.

88. Several non-governmental organizations claimed that the Amnesty Act promulgated in 1995 legalized impunity for human rights violations committed between 1980 and 1995 by civil servants and members of the armed and security forces. The practical effect of that law was said to prevent the relatives of disappeared persons and other victims of human rights violations from finding out the truth and receiving just and adequate compensation for the suffering to which they had been subjected.

89. Special concern was again expressed regarding the decision of the Government of Peru to withdraw from the jurisdiction of the Inter-American Court of Human Rights, with immediate effect. It was said that by that act the Government was denying Peruvian citizens the benefit of independent, international judicial scrutiny, as the national courts were not able, in most cases, to provide effective remedies.

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* Mr. Agha Hilaly did not participate in the decisions relating to this subsection of the report.

Russian Federation

90. Eighteen newly reported cases of disappearance were transmitted to the Government. Two cases were transmitted under the urgent action procedure. One case concerns a journalist who was detained in Chechnya in January 2000 by Russian soldiers. This case was subsequently clarified on the basis of information received from the source according to which the person had been released. Another case concerns the Speaker of the Chechen Parliament of the Russian Federation who disappeared in September 2000. The Government subsequently informed the Working Group that a number of investigative actions and police inquiries were being undertaken to determine who organized and carried out the abduction and ascertain the person's whereabouts. The other cases occurred in January and March 2000 and concerned persons who were detained at a Russian army checkpoint located between Chiri-Yurt and Duba-Yurt villages in Chechnya. Soldiers of the 245th armoured infantry regiment were said to be responsible. Three of the victims were detained at the checkpoint while they were evacuating wounded women and children in a car. The car was later found abandoned in a field.

91. Particular concern was expressed by two non-governmental organizations regarding the existence of internment or "filtration" camps located in Grozny, Pyatigorsk, Georgievsk, Mozdok and Chernokozovo. It was alleged that people detained in such camps have no access to their relatives, medical doctors or lawyers and are especially at risk of enforced disappearance, ill-treatment and torture.

92. It was reported that people crossing between Chechnya and Ingushetia were subjected to control at the Russian military checkpoints in order to check their identity documents against computer records of suspected members of Chechen armed groups. Women and men are separated and their identity documents checked by soldiers. A number of men were detained following such checks and taken to "filtration" camps. The whereabouts of many of those believed held in such camps were said to remain unknown.

Rwanda

93. The Working Group transmitted five newly reported cases of disappearance to the Government, four of which reportedly occurred in July and August 1994 in Kigali. In spite of the intervention of the Ministry of Justice, the Public Prosecutor's Office and the Prefect of Kigali, the whereabouts of these persons remain unknown. Another case reportedly occurred in April 2000 and was sent under the urgent action procedure. It concerns a citizen of the Democratic Republic of the Congo who was reportedly arrested at the border between Rwanda and Uganda. In accordance with its methods of work, the Working Group also transmitted to the Government of Rwanda two cases which occurred in February 2000 and which were also transmitted to the Government of the United Republic of Tanzania (see para. 101).

Sri Lanka

94. The Working Group visited Sri Lanka in October 1999. The purpose of its visit was twofold: to follow up on the recommendations made by the Working Group during its visits in 1991 and 1992 and to identify efforts taken to minimize and resolve the problem of enforced

or involuntary disappearance, as well as to follow up on new developments. During 2000 the Government provided information on 6,297 outstanding cases of enforced disappearance. The Working Group decided to apply the six-month rule to those cases.

95. The Working Group transmitted 49 newly reported cases to the Government, 15 of which occurred in 2000 and 34 between 1990 and 1999; 16 cases were sent under the urgent action procedure. During the same period, the Working Group clarified 479 cases on the basis of information provided by the Government. In 457 cases death certificates were issued and compensation was paid to the relatives. In addition, 16 other missing persons were released, 3 other persons were found in prison and 3 persons were found living at liberty. Another case was clarified on the basis of information received from the source stating that the person concerned was found in detention; he had been held in incommunicado detention since 22 June 2000 by members of the Security Coordinating Unit in Vavuniya, which previously had denied having him in custody. The information provided by the Government regarding 14 other cases was not considered sufficient to consider them clarified.

96. Three of the newly reported cases concerned the mother and two brothers of a member of the Liberation Tigers of Tamil Elam (LTTE) who carried out a suicide bomb attack against an election rally at Jaela, near Colombo. The Government reported that, as ordered by the magistrate conducting the inquiries, they were flown to Colombo for a DNA test to identify the suicide bomber. After the DNA test, they had returned to their residence in Jaffna and were living at liberty. The source made no comments on the Government's reply during the six-month period and the cases were accordingly considered clarified. Other cases that occurred in 2000 took place in Batticaloa, Colombo, Sasthri Koolankulam, Trincomalee and Vavuniya. The victims were detained by the army, the navy , the Directorate of Military Intelligence, the Security Coordinating Unit and the People' s Liberation Organization of Tamil Eelam (PLOTE), an armed Tamil group opposed to the LTTE, allegedly acting with the acquiescence of the security forces.

97. New cases of enforced or involuntary disappearance have taken place in a setting of intensified armed conflict between government troops and the LTTE. The Working Group was informed that there has been an increase in reports of enforced disappearance since new emergency regulations were introduced by the President of the Republic in May 2000. Under these new regulations, published on 3 May 2000 and promulgated under section 40 of the Public Security Ordinance, members of the army and police officers have the right to arrest any person engaged in activities considered to be a threat to national security, to seize printing presses and to take possession of planes, ships and vehicles and other assets from the public for national security purposes. It was pointed out that wider powers given to the security forces under the new regulations and the removal of several earlier safeguards against arbitrary arrest and detention may have contributed to the increase.

Sudan

98. No new cases were transmitted by the Working Group to the Government. The Working Group clarified one case on the basis of information previously provided by the Government on which no objections were received from the source. The Government reported that the person concerned had been released. She had been arrested on suspicion of passing classified information to foreign agents.

Turkey

99. The Working Group transmitted three newly reported cases to the Government, which reportedly occurred in December 1999. The three cases were sent under the urgent action procedure. The cases concern persons who were detained in Istanbul by security officers and taken to an unknown destination.

Ukraine

100. One newly reported case was transmitted by the Working Group to the Government. It concerns the head of an Internet newspaper who disappeared in September 2000 in Kiev and who had previously complained that he and his colleagues at the newspaper had been repeatedly harassed by police officers because of their work as journalists.

United Republic of Tanzania

101. The Working Group transmitted two newly reported cases of disappearance to the Government, both of which occurred in 2000 and were sent under the urgent action procedure. The two cases concerned Rwandese nationals who were arrested in Kigoma, United Republic of Tanzania, by Tanzanian police officers and taken to the border with Rwanda. In accordance with the Working Group's methods of work, these cases were also transmitted to the Government of Rwanda (see para. 93) and were subsequently clarified. The source made no observations on the information provided by the Government of Rwanda that these two persons were found in prison. They had been visited by members of the National Commission for Human Rights to assess their situation and had the right to receive visits from their relatives whenever they wished. The Government of Rwanda also pointed out that the rights of these two persons would be respected in accordance with the Universal Declaration of Human Rights.

Uzbekistan

102. The Working Group transmitted one newly reported case to the Government under the urgent action procedure. The case occurred in July 2000 in Tashkent. It concerns a clerical worker who was detained by police officers in plain clothes and taken to an unknown destination. He had previously been detained by the police and released without being charged after he refused to incriminate himself by confessing to anti-constitutional activities.

Venezuela

103. The Working Group transmitted four newly reported cases of disappearance to the Government of Venezuela, which occurred in December 1999 and were sent under the urgent action procedure. The four cases concern persons who were detained in Caraballeda, Tucacas and Tarigua in Vargas State by a group of army paratroopers and who were transferred to the custody of the Directorate of Intelligence and Prevention Services. The Government reported that once responsibility had been determined, those responsible would be charged with the offences of unlawful deprivation of liberty (art. 177 of the Criminal Code), offences against

human dignity (art. 182) and unlawful entry to a person's home (art. 185); enforced disappearance does not exist as an offence in the Penal Code, although it is expressly prohibited by the Venezuelan Constitution.

Yugoslavia

104. The Working Group transmitted to the Government one newly reported case. It concerns a former President of Serbia who disappeared in August 2000 in Belgrade.

Zimbabwe

105. The Working Group transmitted one newly reported case of disappearance to the Government. It concerns a polling officer for the opposition Movement for Democratic Change who was abducted in June 2000 in Bulawayo in the presence of his wife and children. Since then, his whereabouts are unknown.

III. COUNTRIES REGARDING WHICH THE WORKING GROUP RECEIVED COMMENTS FROM GOVERNMENTS OR NON-GOVERNMENTAL ORGANIZATIONS

Angola

106. No new cases of disappearance were transmitted by the Working Group to the Government. Representatives of the Government met with the Working Group during its sixty-first session and provided information concerning three of the four outstanding cases. According to the Government the three persons had disappeared in troubled circumstances of internal armed conflict and were certainly dead. Certificates of presumption of death issued after judicial procedures before the competent authorities were submitted. The Working Group decided to apply the six-month rule to these cases.

Belarus

107. No new cases of disappearance were transmitted to the Government during 2000, but two cases were transmitted in 1999 after last year's report (E/CN.4/2000/64 and Add.1) was drafted. The Government provided information on the three outstanding cases. According to the information received, on 20 September 1999, the Minsk State Prosecutor's Office started an investigation into the disappearance of former member of the Supreme Soviet V.I. Gonchar and businessman A.S. Krasovsky in order to determine their whereabouts. The investigations would also seek to ascertain whether their disappearances had been staged (Mr. Gonchar's in connection with his political activities or Mr. Kraskovsky's in connection with the financial operations of his company), whether they had been abducted for ransom, or in order to steal the vehicle.

108. The Government reported that no evidence had been found of involvement by the Belarusian secret service in the disappearances of Mr. Gonchar, Mr. Krasovsky, or the third individual, Mr. Zakharenko, nor does the Procurator's Office or the Ministry of Internal Affairs yet have any evidence suggesting that the missing men were the victims of a crime.

Dominican Republic

109. The Government provided the Working Group with information regarding the two outstanding cases. In 1997, the Government had reported that the person concerned had a long criminal record and had left the country illegally. Since then, his relatives had not made any further complaints or allegations. In the other case, concerning a journalist, political activist and lecturer at the Autonomus University of Santo Domingo, the Government reported that it was in the process of seeking an amicable settlement in the Inter-American Commission on Human Rights with the relatives of the missing person.

Honduras

110. Special concern was expressed by several non-governmental organizations regarding acts of intimidation, reprisal and harassment against the relatives of victims of enforced or involuntary disappearances and human rights defenders, particularly against members of the Committee of Relatives of Detainees and Disappeared Persons of Honduras. The Chairperson and the General Coordinator of the Committee have achieved commendable progress with a number of court cases concerning forced disappearances. The NGOs also alleged that the investigations are yielding significant evidence of the involvement of high Honduran military officials and intelligence officers in the perpetration of disappearances and other human rights violations.

Thailand

111. The Working Group was informed that the fate and whereabouts of dozens of people who were recorded as missing during the military's violent suppression of the May 1992 pro-democracy demonstrations in Bangkok have never been revealed. It was said that during the suppression of these demonstrations, from 17 to 20 May 1992, more than 52 persons were killed, dozens detained and later disappeared, and nearly 700 others injured.

112. It was alleged that intimidation, apprehension and fear have discouraged many witnesses, and even relatives and friends of the disappeared persons, from meeting and testifying before the agencies set up to receive complaints. In addition, it was alleged that the lack of serious co-operation among concerned officials from the Department of Social Welfare of the Ministry of the Interior and from the Ministry of Defence has resulted in the information not having been collected systematically. This has affected the progress of the investigation.

113. Lastly, it was said that the Office of the Prime Minister has refused to disclose a reportedly serious and comprehensive report on the events prepared by a commission from the Ministry of Defence stating that the Official Information Act allows the authorities to conceal certain information for security reasons. The report is said to contain precise and concrete information both on the victims and about the forces responsible for the disappearances. However, according to the information received, only an eight-page general summary without concrete information has been published.

114. On 23 November 2000, the Working Group received a letter from the Government in which it stated that the allegations received by the Working Group were unfounded. Forty-four people had died in the incident, 48 persons disappeared, 493 people suffered injuries and 731 people had their property damaged. These figures were much lower than the alleged figures. The Government had promptly provided assistance to the people affected by the incident and their families. The Department of Social Welfare had provided logistical and financial assistance. Social welfare officials had visited the injured at their homes and in hospitals. Financial assistance included scholarship funds for the children of people who lost their lives during the incident. Up to date, almost 100 million baht had been provided to the relatives of those who died or disappeared during the incident.

115. The Government further reported that, in accordance with the Information Act, three investigative reports relating to the May 1992 incident had been published in their totality, namely the investigative report of the commission headed by General Pichit Kullawanich totalling 60 pages, the fact-finding report on the operations of defence officers in the incident totalling 114 pages, and the investigative report on the incident totalling eight pages.

Uruguay

116. The Government reported that on 9 August 2000 the Office of the President of the Republic established the Commission for Peace charged with receiving, analysing, sorting and compiling information on enforced disappearances occurring during the de facto regime. The Commission will have a period of 120 days, with the possibility of extension, to complete its work. It shall then draw up a concluding report, including suggestions for appropriate legislative measures with provisions concerning redress and civil status, as well as an individual summary of each case of missing detainee brought to its attention.

IV. COUNTRIES FROM WHICH THE WORKING GROUP RECEIVED NO INFORMATION OR COMMENTS

117. During the period under review, no new cases of disappearances were transmitted by the Working Group to the Governments of the following countries: Afghanistan, Bahrain, Bangladesh, Bolivia, Bosnia and Herzegovina, Brazil, Burkina Faso, Bulgaria, Cambodia, Croatia, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Gambia, Greece, Guinea, Haiti, Iran (Islamic Republic of), Iraq, Israel, Jordan, Kazakhstan, Kuwait, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Malaysia, Myanmar, Mauritania, Mozambique, Nigeria, Paraguay, Philippines, Romania, Saudi Arabia, Seychelles, South Africa, Syrian Arab Republic, Tajikistan, Togo, Uganda, Yemen and Zambia. No new cases were transmitted to the Palestinian Authority.

118. During the period under review, no new information was received from these Governments, or from the Palestinian Authority, with regard to the outstanding cases. The Working Group is therefore unable to report on the fate and whereabouts of the persons concerned.

V. CONCLUSIONS AND RECOMMENDATIONS

119. The Working Group was the first of the thematic mechanisms created by the Commission on Human Rights to serve as a channel of communication between victims, families and non-governmental organizations on the one hand, and Governments on the other. Since its establishment as a pioneering body in 1980, the Working Group has transmitted more than 49,500 cases to Governments. Although some 3,500 cases have been clarified, around 46,000 cases are still outstanding. New cases continue to be reported from as many as 29 countries.

120. It is crucial for the countries that have a large backlog of outstanding cases to make consistent and effective efforts to identify the fate and whereabouts of the disappeared persons. At the same time, in agreement with the relatives of the missing persons, methods are being explored for the clarification of cases, including acknowledgement of the responsibility of the State and the award of appropriate compensation. The Working Group renews its offer of cooperation to the parties concerned.

121. Bearing in mind that the effectiveness of its mandate depends on the cooperation received from Governments, especially of those countries in which enforced disappearance is an ongoing phenomenon, the Working Group attaches the greatest importance to keeping open channels of communication and dialogue with all Governments, some of which have sent high-level representatives to the Working Group's sessions.

122. The Working Group wishes to emphasize that it is absolutely essential to its activities to continue to receive cooperation from non-governmental organizations concerned with the problem of enforced disappearances. Their activities deserve full support considering that they are a key element in the clarification of cases. The Working Group expresses its appreciation for the cooperation and support it has received from these organizations. At the same time, it notes with deep concern that in some countries these organizations suffer harassment and persecution which prevent them from fulfilling their duties. The Working Group calls upon the Governments concerned to take all measures to guarantee these organizations and their members full protection.

123. The Working Group draws the attention of all Governments to the fact that the full implementation of the Declaration on the Protection of All Persons from Enforced Disappearance is crucial for the prevention and termination of this human rights violation. In particular, the Working Group wishes to stress the importance of measures aimed at reducing periods of administrative detention to an indispensable minimum, at establishing accessible and up-to-date registers of detainees open to the public, and at guaranteeing access and appropriate information to the relatives, lawyers and medical doctors of persons deprived of their liberty.

124. The Working Group stresses once again that impunity is one of the main causes - probably the root cause - of enforced disappearance and at the same time one of the major obstacles to clarifying past cases. It is very important that all States comply with the Declaration, which obliges them to make all acts of enforced disappearance an offence under domestic criminal law; to investigate promptly, thoroughly and impartially any allegation of enforced disappearance and to bring the perpetrators to justice. In addition, the Working Group

strongly urges all States to comply with article 18, which establishes that perpetrators of enforced disappearance shall not benefit from any special amnesty law or similar measure that might have the effect of exempting them from criminal proceedings or sanctions.

125. It is crucial that, in accordance with the Declaration, Governments take effective legislative, administrative and judicial measures aimed at preventing the occurrence of disappearances in the future. Although article 4 of the Declaration is very clear and applies to all States, i.e. not only to those in which enforced disappearances actually take place, in very few countries have the criminal laws been amended in order to ensure that acts of enforced disappearance as such are offences punishable by appropriate penalties. The enactment and effective implementation of such legal measures would be a major step forward in preventing acts of enforced disappearance.

126. The Working Group wishes to express once again its sincere appreciation to its secretariat for its dedication in the pursuance of the difficult tasks it has to undertake. The Working Group avails itself of this opportunity to appeal, once again, to the Commission on Human Rights to meet the needs of the Group by allocating appropriate resources to it, considering that the number of secretariat staff has been dramatically reduced during the last few years to only one Professional and one General Service staff member, both working on a part-time basis.

VI. ADOPTION OF THE REPORT

127. On 24 November 2000, the present report was adopted by the following members of the Working Group on Enforced or Involuntary Disappearances:

Ivan Tosevski (Chairman-Rapporteur)	(The former Yugoslav Republic of Macedonia)
Agha Hilaly	(Pakistan)
Manfred Nowak	(Austria)
J. 'Bayo Adekanye	(Nigeria)

(Mr. Diego García Sayán (Peru) was not present at the sixty-second session).

Separate opinion of Manfred Nowak

128. "For the reasons stated in my joint separate opinion (together with Diego García Sayán) to the last annual report of the Working Group (E/CN.4/2000/64, para. 145), I wish again to express my strong objections to the format and structure of the present report which attempts to comply with the 32-page limit requested by the General Assembly. The present report neither adequately reflects the situation of enforced disappearances throughout the world nor the efforts of the Working Group to clarify the fate and whereabouts of some 50,000 disappeared persons in more than 70 countries."

Annex I

STATISTICAL SUMMARY: CASES OF ENFORCED OR INVOLUNTARY DISAPPEARANCES REPORTED TO THE WORKING GROUP BETWEEN 1980 AND 2000

Country	Total	Clarified	Outstanding
Afghanistan	2	0	2
Algeria[a]	1 087	13	1 074
Angola	7	3	4
Argentina	3 455	78	3 377
Bahrain	1	1	0
Bangladesh	1	0	1
Belarus	3	0	3
Bolivia	48	20	28
Brazil	60	52	8
Bulgaria	3	3	0
Burkina Faso	3	0	3
Burundi	52	0	52
Cambodia	2	0	2
Cameroon	9	0	9
Chad	13	1	12
Chile	912	69	843
China	95	65	30
Colombia[b]	1 103	258	845
Congo	31	0	31
Dem. Rep. of the Congo	51	9	42
Dominican Republic	4	2	2
Ecuador	22	15	7
Egypt	20	8	12
El Salvador	2 661	391	2 270
Equatorial Guinea	3	0	3
Eritrea	34	0	34
Ethiopia	114	2	112
Gambia	1	1	0
Greece	3	0	3
Guatemala	3 151	169	2 982
Guinea	28	7	21
Haiti	48	10	38
Honduras	199	70	129
India	338	50	288
Indonesia	637	76	561
Iran (Islamic Rep. of)	516	15	501
Iraq	16 514	130	16 384

Country	Total	Clarified	Outstanding
Israel	3	1	2
Jordan	1	0	1
Kazakhstan	2	2	0
Kuwait	1	0	1
Lao People's Democratic Rep.	1	0	1
Lebanon	306	8	298
Libyan Arab Jamahiriya	4	1	3
Malaysia	2	1	1
Mauritania	1	0	1
Mexico[c]	363	133	214
Morocco	247	134	113
Mozambique	2	0	2
Myanmar	2	2	0
Namibia	1	0	1
Nepal	51	5	46
Nicaragua	234	131	103
Nigeria	6	5	1
Pakistan	80	5	75
Paraguay	23	20	3
Peru	3 006	638	2 368
Philippines	658	157	501
Romania	1	1	0
Russian Federation	211	1	210
Rwanda	21	2	19
Saudi Arabia	3	1	2
Seychelles	3	0	3
South Africa[d]	11	5	0
Sri Lanka	12 277	595	11 682
Sudan	266	5	261
Syrian Arab Republic	35	27	8
Tajikstan	8	2	6
Thailand	2	0	2
Togo	11	1	10
Tunisia	15	15	0
Turkey	177	84	93
Turkmenistan	2	2	0
Uganda	61	7	54
Ukraine	4	0	4
United Arab Emirates	1	1	0
United Republic of Tanzania	2	2	0

Country	Total	Clarified	Outstanding
Uruguay	31	8	23
Uzbekistan	11	0	11
Venezuela	14	4	10
Yemen	150	1	149
Yugoslavia	1	-	1
Zambia	1	1	0
Zimbabwe	1	0	1
Palestinian Authority	1	0	1

[a] Seven cases were deleted for Algeria owing to duplication, in accordance with the decision of the Working Group at its fifty-seventh session.

[b] There were actually 28 cases sent under the urgent action procedure to the Government of Colombia during 1999 (not 27, as stated in document E/CN.4/2000/64).

[c] Sixteen cases have been discontinued in Mexico.

[d] Six cases have been discontinued in South Africa.

Annex II

DECISIONS ON INDIVIDUAL CASES TAKEN BY THE WORKING GROUP DURING 2000

Country	Cases which allegedly occurred in 2000	Cases transmitted to the Government during 2000		Clarifications by:		Discontinued cases
		Urgent actions	Normal actions	Government	Non-governmental sources	
Algeria	3	-	217	2	-	-
Argentina	2	2	-	-	-	-
Belarus	-	2	-	-	-	-
Burundi	-	-	1	-	-	-
Cameroon	-	-	3	-	-	-
Chad	-	1	-	-	-	-
Chile	-	-	-	4	-	-
China	-	-	-	2	-	-
Colombia	15	15	-	22	-	-
Congo	-	-	31	-	-	-
Democratic Republic of the Congo	1	1	-	-	1	-
Ethiopia	-	-	1	-	-	-
India	21	-	27	3	-	-
Indonesia	29	29	8	-	-	-
Lebanon	-	-	18	-	-	-
Mexico	2	4	-	9	-	2
Morocco	1	1	2	-	-	-
Namibia	-	-	1	-	-	-
Nepal	3	5	30	1	1	-
Pakistan	1	1	-	-	-	-
Peru	2	2	-	-	2	-
Russian Federation	18	2	16	-	1	-
Rwanda	1	1	4	-	-	-
Sri Lanka	15	16	33	479	1	-

Country	Cases which allegedly occurred in 2000	Cases transmitted to the Government during 2000		Clarifications by:		Discontinued cases
		Urgent actions	Normal actions	Government	Non-governmental sources	
Sudan	-	-	-	1	-	-
Turkey	-	3	-	-	-	-
Ukraine	1	1	-	-	-	-
United Republic of Tanzania	2	2	-	2	-	-
Uzbekistan	1	1	-	-	-	-
Venezuela	-	4	-	-	-	-
Yugoslavia	1	1	-	-	-	-
Zimbabwe	1	1	-	-	-	-

Annex III

COMMENTS ON THE DRAFT INTERNATIONAL CONVENTION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

The Working Group welcomes the efforts of the Sub-Commission on the Promotion and Protection of Human Rights to prepare this draft and appreciates that the draft international convention contains many of the recommendations which the Working Group has for many years submitted to the Commission on Human Rights and Governments.

The draft international convention is a very comprehensive and carefully drafted document based on, but at the same time clearly going beyond the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and the Declaration on the Protection of All Persons from Enforced Disappearances of 1992 ("the Declaration"). It consists of a preamble and three parts. Since the Working Group agrees with the general approach and most of the provisions of the draft international convention, it will restrict its comments to those provisions which merit its attention.

Part I contains the substantive provisions and focuses primarily on the individual criminal responsibility of the perpetrators of enforced disappearance as well as on obligations of States parties to prevent such crimes. While the preamble recognizes, similarly to article 1 (1) of the Declaration, that any act of enforced disappearance constitutes an "offence to human dignity", article 3 (1) stipulates that the systematic or massive practice of enforced disappearance constitutes a "crime against humanity". This change as compared to the Declaration correctly takes into account recent developments in international law, notably the Inter-American Convention on Forced Disappearance of Persons of 1994 and the Rome Statute of the International Criminal Court of 1998, both of which should, in the opinion of the Working Group, be referred to in the preamble.

The principle of universal jurisdiction (art. 6 (1) (b) in conjunction with arts. 7 and 13) is drafted in a much clearer manner than in comparable treaties, including the Convention against Torture. Some provisions of Part I seem somewhat repetitive, for example the obligation of States parties to grant their investigating authorities full access to places where victims of forced disappearance might be held, to be found in articles 11 (4), 20 (2) and 21 (6).

The principle of non-refoulement in article 15 seems to go beyond existing international law by prohibiting the expulsion or extradition of a person to a State where enforced disappearance or "any other serious human rights violation" might be inflicted on him or her. This expression seems fairly vague and might be interpreted to include also violations of human rights such as personal liberty, freedom of expression or procedural and other guarantees presently not covered by the non-refoulement principle.

The Working Group particularly welcomes the obligation of States parties pursuant to article 18 to prevent and punish the abduction of children whose parents are victims of enforced disappearance and of children born during their mother's disappearance. Together with the

general rule of returning such children to their family of origin, the explicit possibility of annulling any adoption which has arisen from an enforced disappearance, and the principle of the best interest of the child taken from the Convention on the Rights of the Child, this obligation provides an appropriate remedy to one of the most serious phenomena occurring in the context of enforced disappearances.

In article 22 (5), the draft international convention stipulates the obligation of States parties to establish competent national authorities to carry out preventive visits to places of detention, similar to those envisaged in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987 and the draft optional protocol to the United Nations Convention against Torture. The Working Group proposes that such regular visits be carried out by national authorities which are not only competent but also independent of the executive branch.

Finally, the Working Group wishes to express its concern at the formulation used in article 23. What does it mean that States parties shall guarantee that detainees are released "in conditions in which their physical integrity and their ability fully to exercise their rights are assured"?

Part II contains the international monitoring provisions, i.e. the establishment of a committee against forced disappearance charged with carrying out five different monitoring tasks: the examination of States parties' reports and inter-State and individual communications, as well as the carrying out of the inquiry and tracing procedures.

The Working Group remains doubtful about the wisdom of creating a further treaty monitoring body. It would have preferred if these tasks were assigned to one of the existing treaty monitoring bodies, in particular the Committee against Torture or the Human Rights Committee. If, however, one wishes to create another body, one should take into account the negative experience of bodies with only 10 members, such as the Committee against Torture or the Committee on the Rights of the Child. The relevant provision in article 25 (1) should therefore provide for at least 18 members.

In the provisions regulating the nomination and election of committee members, the Working Group recommends that the possibility for States parties to nominate persons other than their own nationals not be excluded. The combined reading of article 25 (2) and (5) leads to the unfortunate conclusion that an excellent Committee member cannot be re-elected if his or her own Government (which might have changed in the meantime) refuses to re-nominate him or her. Similarly, article 25 (6), in the opinion of the Working Group, seems to pay too much attention to the right of individual States parties to nominate or even "appoint" their own experts. There is no reasonable justification why, in the event of the death or resignation of a committee member, only the State of his or her nationality should have the power to nominate a successor.

The draft international convention does not establish optional procedures. On the other hand, article 36, which prohibits any reservation to Part I, seems to allow for the possibility of "opting out" of four of the five procedures (not the tracing procedure in article 31), including the

State reporting procedure in article 27. In other words: any State party could make a reservation to the establishment and procedures of the committee unless such a reservation "would inhibit the operation of any of the bodies established by this Convention". This rather peculiar provision is fairly unclear and needs further interpretation. In view of the highly sensitive nature of treaty body interpretation of the power of States parties to make reservations, the Working Group proposes the deletion of this provision in article 36 and the prohibition of reservations altogether. If, for political reasons, there should be a need for one or another optional procedure, this would be better stated in the respective articles.

The State reporting procedure in article 27 envisages only first (initial) and supplementary reports at the request of the committee, i.e. it rightly avoids the imposition of periodic reporting obligations. At the same time, it introduces the interesting idea of combining the examination of first reports with a visit to the country. The Working Group wonders why such a possibility is not envisaged for the examination of supplementary reports as well.

The inter-State communication procedure in article 29, notwithstanding minor improvements, still seems to follow the fairly inefficient model of articles 11 to 13 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 and articles 41 and 42 of the International Covenant on Civil and Political Rights of 1966. The Working Group cannot understand why one would wish, 10 years after the end of the cold war, to restrict the powers of the committee to the exercise of a mere arbitration and conciliation function and the submission of only a brief final report containing the facts and submissions of the States parties, as envisaged in article 29 (h) (ii), rather than to authorize it to decide on the alleged violations as in the individual communication procedures or in comparable inter-State complaints procedures under the European Convention on Human Rights or relevant treaties of the International Labour Organization.

With respect to the individual communication procedure, the Working Group particularly welcomes the right of groups and non-governmental organizations to submit communications as stipulated in article 30 (1) and the power of the Committee, envisaged in article 30 (4), to organize hearings and investigative missions. The traditional United Nations terminology dating from the time of the cold war ("communications" and "views" rather than "complaints" or "petitions" and "decisions") sounds, however, somewhat outdated in a human rights treaty of the twenty-first century.

Article 31 regulates the traditional tracing procedure as it is currently carried out by the Working Group. Although this procedure is primarily of a humanitarian nature, as stipulated in article 31 (4), it may overlap or even come into conflict with the inquiry procedure in article 28. This is, however, a general problem which arises if one body is entrusted with both monitoring and humanitarian functions. The Working Group wishes to point out that it might be wise to specify whether this tracing procedure also applies to international and non-international armed conflicts (in view of the special competencies of the International Committee of the Red Cross under the Geneva Conventions) as well as to disappearances allegedly carried out by non-State actors.

In conclusion, the Working Group wishes to reiterate its gratitude to the Sub-Commission for having prepared such an excellent draft and expresses its hope that the Commission on Human Rights will speedily finalize the drafting process. It welcomes the idea of the Commission, as expressed in paragraph 9 of its resolution 2000/37 of 20 April 2000, to set up an inter-sessional working group to consider the draft convention. Members of the Working Group are, of course, happy to make their expertise available to this inter-sessional working group if so requested by the Commission.

The Chairman of the Working Group wishes to add his personal opinion that in view of the highly political nature of forced disappearances, he considers that it would be more efficient to strengthen the Working Group, as the relevant thematic mechanism of the Commission on Human Rights, than to adopt another legally binding human rights treaty with quasi-judicial monitoring procedures.

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Item 11 (b) of the provisional agenda

CIVIL AND ?POLITICAL RIGHTS, INCLUDING QUESTIONS OF DISAPPEARANCES AND SUMMARY EXECUTIONS

Question of enforced or involuntary disappearances

Note by the secretariat

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* The annexes to the present document are reproduced in English only.

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CONTENTS

		Page
Note by the secretariat		3
	Annexes*	
I.	COMMENTS AND INFORMATION PROVIDED BY STATES	4
	A. Argentina	4
	B. Belarus	5
	C. Chile	6
	D. Croatia	10
	E. Germany	11
	F. Guatemala	16
	G. Kuwait	18
	H. Portugal	20
	I. Qatar	26
II.	COMMENTS PROVIDED BY THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES	27
III.	COMMENTS AND INFORMATION PROVIDED BY NON-GOVERNMENTAL ORGANIZATIONS	31
	A. International Committee of the Red Cross	31
	B. American Association of Jurists	32
	C. Amnesty International	33
	D. Association of Families of Prisoners and Disappeared Saharans	34
	E. Latin American Federation of Relatives of Disappeared Persons	35
	F. International Commission of Jurists, Human Rights Watch and International Federation of Human Rights	37
	G. Social Justice Committee of Montreal	40

* Issued in English only. The original versions of all comments are available for consultation in the files of the secretariat.

Note by the secretariat

1. In its resolution 1999/38 of 26 April 1999, the Commission on Human Rights requested the Secretary-General to renew the invitation to States, international organizations and non-governmental organizations to submit their views and comments on the draft international convention on the protection of all persons from enforced disappearance (E/CN.4/Sub.2/1998/19, annex) transmitted by the Sub-Commission in its resolution 1998/25 of 26 August 1998.

2. By note verbale dated 10 November 1999, the Secretary-General renewed the invitation to States, international organizations and non-governmental organizations to forward to the Office of the High Commissioner for Human Rights any information they would wish to provide on the draft international convention on the protection of all persons from enforced disappearance.

3. In its resolution 2000/37 of 20 April 2000, the Commission on Human Rights requested the Secretary-General to ensure the wide dissemination of the draft international convention on the protection of all persons from enforced disappearance, asking States, international organizations and non-governmental organizations to submit their views and comments, as a matter of priority, on the draft convention, on the follow-up thereto, and in particular, on whether an inter-sessional working group should be set up to consider the draft convention.

4. By two notes verbales, of 8 August 2000 and 31 August 2000, the Secretary-General renewed the request to States, international organizations and non-governmental organizations to submit their views and comments on these questions.

Annex I

COMMENTS AND INFORMATION PROVIDED BY STATES

In reply to these notes verbales, the Secretary-General received the following communications.

A. Argentina

[Original: Spanish]

By note verbale dated 2 October 2000, the Permanent Mission of Argentina to the United Nations Office at Geneva provided the secretariat with the following comments:

"The Argentine Republic supports the establishment of an inter-sessional working group to study the draft international convention on the protection of all persons from forced disappearance and believes that the draft provides a sound negotiating basis for formulating an international instrument on this subject.

Argentina is of the view that an international convention against forced disappearance would fill a legislative gap in the international system and would have a preventive effect in the process of eradicating this aberrant practice in various parts of the world.

By way of background information, it should be pointed out that Latin America has taken a fundamental step towards prosecuting persons accused of committing crimes against humanity by giving effect to the Inter-American Convention on Forced Disappearance of Persons. The draft Inter-American convention was negotiated for approximately 10 years, first in the Inter-American Commission on Human Rights and then in the Inter-American Juridical Committee of the Organization of American States (OAS). At these meetings the delegations of Chile and Argentina introduced the concept of crimes against humanity to cover this type of crime and the concept was included in the final draft adopted at the OAS General Assembly in Belém do Pará (Brazil) in June 1994.

In its preamble, the Inter-American Convention reaffirms that 'the systematic practice of the forced disappearance of persons constitutes a crime against humanity', and in its operative part provides for the possible situations relating to alleged perpetrators of such crimes. Thus, in article II it stipulates that 'for the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State ... followed by an absence of information or a refusal to acknowledge the deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees'.

Article VI goes on to stipulate: 'When a State Party does not grant extradition, the case shall be submitted to its competent authorities as if the offence had been committed within its jurisdiction, for the purposes of investigation and, when appropriate, for criminal action, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the State that has requested the extradition.'

On 13 September 1995, the Argentine Republic approved the Inter-American Convention on Forced Disappearance of Persons through Act No. 24.556, depositing the instrument of ratification with the Secretary-General of OAS on 28 February 1996.

Furthermore, in accordance with the procedure set forth in article 75, paragraph 22 (in fine), of the Argentine Constitution, the Inter-American Convention was accorded constitutional status under Act No. 24.820 of 30 April 1997, joining the 11 human rights instruments mentioned in that article which already had that status.

It should be noted that Argentina's reason for promoting the negotiation of the Inter-American Convention was linked to its painful national experience and, in particular, to the work performed by the National Commission on the Forced Disappearance of Persons (CONADEP), the prosecution of the military juntas and the investigations conducted by the Public Prosecutor's Office.

The Argentine Republic acknowledges the important work done by the Commission on Human Rights Working Group on Enforced or Involuntary Disappearances. However, it considers that, although the Working Group's activity has been very commendable, the growing number of reports of enforced disappearance highlights the urgent need for a legally binding international instrument to prevent and punish the practice, such as the text of the draft convention (E/CN.4/Sub.2/1998/19, annex).

Finally, we would like to recall that, following a proposal put forward by Costa Rica and supported by Argentina, the enforced disappearance of persons was also included among crimes against humanity in the context of the work of the Preparatory Commission for the Establishment of an International Criminal Court. The statute of the International Criminal Court, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court in Rome in 1998, is at present half-way towards being approved by the Argentine National Congress."

B. Belarus

[Original: Russian]

By note verbale dated 28 December 1999, the Permanent Mission of the Republic of Belarus to the United Nations Office at Geneva provided the secretariat with the following comments:

"The law enforcement bodies of the Republic of Belarus regard one of their main tasks as being to protect citizens from criminal attacks and to ensure the guarantees of an individual's rights and freedoms. Particular importance is attached to examining cases of the disappearance of people.

In 1998 searches were mounted for 4,587 persons in the Republic. By the end of that same year, 892 people were still being sought. Over 11 months of 1999 there were 5,487 missing persons being looked for.

The procurators' offices of the Republic of Belarus keep under constant supervision the lawfulness of action taken by the internal affairs bodies on statements and reports of unexplained disappearances of citizens. In cases where there are reasons for believing that a missing person may have been the victim of a crime, a criminal file is opened and an investigation is carried out.

In 1998 the procurators' offices initiated 48 criminal cases relating to the unexplained disappearance of people, and the fate of the missing persons was established in 31 of those cases.

During 11 months of 1999 procurators of the Republic initiated 39 criminal cases. The fate of the missing persons was determined in 13 of those cases, and 22 criminal proceedings are under way.

Considering the importance of the problem in question, the new Code of Criminal Procedure of the Republic of Belarus, in force since 1 July 2000, provides (art. 167) that the fact of the disappearance of a person constitutes grounds for initiating a criminal case. It may be noted also that searches for missing persons and the investigation of criminal cases involving unexplained disappearances are subject to constant procuratorial supervision."

C. Chile

[Original: Spanish]

By note verbale dated 16 October 2000, the Permanent Mission of Chile to the United Nations provided the secretariat with the following information:

"With regard to the letter of the Office of the United Nations High Commissioner for Human Rights requesting opinions on the draft international convention on the protection of all persons from enforced disappearance (referred to below as 'the convention'), I have the honour to inform you that this Ministry does not have any objections in this regard. In general terms, the draft text is similar to that of the Inter-American Convention on Forced Disappearance of Persons, which is being sponsored by this Ministry and discussed in Parliament.

We believe that the approach and content of the draft convention are sound. However, there may be some objection in the National Congress to the provisions on jurisdiction and prescription (which differ from some of the provisions of the Inter-American Convention).

General content

(a) The provisions of the convention establish international obligations for the States parties to make the necessary changes in internal law to ensure full compliance with the agreements adopted.

The convention gives a definition of enforced disappearance that is similar to the one used in the Inter-American Convention on Forced Disappearance of Persons, but without the element relating to the lack of any possibility of applying for procedural remedies as a result of the disappearance and a refusal to supply information. This offence consists of the following elements:

The State must have participated in some way in the commission of the offence, i.e. because it was committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State;

The deprivation of liberty must have been followed by a lack of information or a refusal to acknowledge it or by a refusal to provide information on the fate or whereabouts of the person.

(b) The convention provides that the systematic or widespread practice of enforced disappearance of persons constitutes a crime against humanity and differentiates it from non-systematic enforced disappearance (the two are treated differently in some respects). The States parties undertake to adopt the legislative measures that may be needed to define systematic and non-systematic enforced disappearance as two separate offences and to impose an appropriate penalty which takes account of their extreme gravity (excluding the death penalty).

(c) The States parties also undertake, in particular:

Not to practise, permit or tolerate enforced disappearance;

To investigate immediately and promptly any complaint of enforced disappearance and to inform the family of the disappeared person;

To impose penalties, within their jurisdiction, for the offence of enforced disappearance of persons;

To cooperate with each other and with the United Nations to contribute to the prevention, investigation, punishment and eradication of the enforced disappearance of persons; and

To provide prompt and adequate compensation to the victims of these offences.

(d) On the basis of this convention, punishment should be imposed on:

The principal and other participants in the offence of enforced disappearance or any element thereof;

The principal and other participants in incitement, conspiracy or attempt to commit this offence or to conceal it;

Anyone who fails to fulfil the legal obligation to act to prevent the commission of this offence.

(e) The principles established by the convention are as follows:

Ongoing offence: the offence of enforced disappearance of persons shall be regarded as continuing and ongoing as long as the fate or whereabouts of the disappeared person has not been determined (it is not an offence which is committed instantaneously).

Mitigating circumstances: mitigating circumstances may be established for persons who, having participated in acts which constitute enforced disappearance, are instrumental in bringing the victim forward alive or in providing information which would shed light on the enforced disappearance of a person.

Classification of the offence: enforced disappearance shall not be regarded as a political offence for purposes of extradition (applicable in every extradition treaty entered into between States parties) or political asylum.

Non-applicability of statutory limitations: criminal proceedings arising from the offence of enforced disappearance and any penalty which is legally imposed on the person responsible therefor shall not be subject to the statute of limitations.

As an exception, ordinary (non-systematic) enforced disappearance shall be subject to the statute of limitations in accordance with the internal law of the States parties, but the maximum limitation shall be applied and it shall be counted only as from the time when the whereabouts or fate of those who have disappeared has been determined.

Due obedience: due obedience to orders or instructions from a superior may not be invoked as a justification. Any person receiving such orders shall have the right and the duty not to obey them.

Enforced disappearance committed by a subordinate shall not exempt his superiors from criminal responsibility if they failed to exercise their authority to prevent its commission or to put an end to it, provided that they were in possession of information that it was being or would be committed.

The convention provides that the States parties shall undertake to ensure that the training of law enforcement personnel and officials includes the necessary education regarding this offence.

Jurisdiction: enforced disappearance of persons shall be regarded as an offence in each State party, which shall therefore take measures to establish its jurisdiction in the following cases:

When the enforced disappearance or any of its constituent elements was committed in any territory under its jurisdiction;

When the alleged principal and other participants are in the State party, regardless of their nationality and that of the person who has disappeared;

The foregoing shall not preclude the exercise of jurisdiction by an international court;

When a State does not exercise its jurisdiction, it shall immediately notify other States of this fact.

Extradition: when a State party does not grant extradition or extradition is not requested, it shall bring the case before the competent authorities.

Military jurisdiction: the convention states that the persons alleged to have committed the offence of enforced disappearance may be tried only in the ordinary courts of law of each State, to the exclusion of any exceptional or special courts, particularly military courts.

Minors: States parties must punish the appropriation of children of disappeared persons or children born during their mother's enforced disappearance. In such cases, States parties have an obligation to find and identify the children, on the basis of the general principle that minors must be returned to their family of origin. States parties must also harmonize their adoption laws with a view to providing for the possibility of reviewing adoptions and, if necessary, annulling those resulting from an enforced disappearance.

(f) Other relevant provisions contained in the convention:

States parties undertake to provide for a special legal remedy as a means of rapidly determining the whereabouts of persons who have disappeared or identifying the participants in such offences.

Special regulations apply to deprivations of liberty in order to guarantee respect for fundamental human rights.

Without prejudice to the applicable international responsibilities, the State is held liable under civil law for enforced disappearances.

A United Nations committee against enforced disappearance is established and its composition, functioning, functions and powers are defined.

(g) The adoption of this convention will require a number of changes in Chilean legislation relating primarily to the characterization of enforced disappearance as an offence and to the legal rules applicable to its prosecution:

Penal Code: as to the characterization of enforced disappearance as an offence, it must be understood that it is a continuing or ongoing offence as long as: the fate of the victim has not been determined; a penalty commensurate with its extreme seriousness has not been imposed; it has not been differentiated from enforced disappearance not involving a systematic State practice; a special system for mitigating circumstances has not been set up for anyone who provides information to save the life or identify the whereabouts of the person in detention; and the non-applicability of statutory limitations to this category of offence has not been established.

Code of Military Justice and Administrative Statute, Act No. 18,834: the jurisdiction of these courts to try this offence is ruled out; the due obedience exemption is not applicable to this type of offence; and it is an obligation for superiors to exercise their authority in order to prevent such offences.

Code of Criminal Procedure: for the purposes of extradition, enforced disappearance is not to be regarded as a political offence and, where extradition is not granted, the offence must be tried in national courts.

Courts Organization Code: the convention indicates that each State determines the way in which it exercises its jurisdiction in these cases.

Constitutional Organization Act on States of Emergency: according to the convention, exceptional circumstances may in no case be invoked as a justification of the enforced disappearance of persons; speedy judicial remedies must exist to determine the whereabouts of persons deprived of their liberty.

It should also be pointed out this Ministry is at present carrying out the relevant studies with a view to incorporating this international instrument in internal law. A bill to amend the Penal Code will be required for this purpose."

D. Croatia

[Original: English]

The secretariat received the following comments from the Ministry of Foreign Affairs of the Republic of Croatia, transmitted by note verbale dated 18 January 2000 by the Permanent Mission of the Republic of Croatia to the United Nations Office at Geneva:

"Forced disappearances are regulated in the Croatian Criminal Law, chapter XI, under the section on criminal acts against human and civil rights and freedoms

(article 125 - kidnapping). The said article on kidnapping provides for imprisonment of six months to five years for the acts of unlawful custody, imprisonment or other deprivation or limitation of the freedom of movement.

A more serious form of this act is punishable by a prison sentence of from 1 to 10 years if committed on a child or an underage person or if accompanied by a threat of death or heavy injury, or if committed within a gang or a criminal organization. The law provides for exoneration if the hostage is voluntary released before the perpetrator's demands have been fulfilled.

In their work the police deal with a small number of kidnaps. Thus in 1997 only 12 such cases were recorded, with charges brought against 29 persons. In 1998 charges were brought against 32 persons suspected of committing 20 kidnaps.

Unlike the early wartime period when such criminal acts were motivated by ethnic or religious hatred and intolerance, since the end of 1992 such acts have been largely committed for criminal reasons or by persons with mental disorders, mostly involving blackmail, forcible debt settlement, mutual showdowns and the like.

Except for property damage caused in some cases, the victims have not been seriously harmed. In dealing with and preventing such crimes, the police pay special attention to the safety of the persons affected and for this reason employ units specialized in handling hostage and similar crisis situations."

E. Germany

[Original: English]

On 11 February 2000, by note verbale No. 40/2000, the Permanent Mission of Germany transmitted the following comments to the United Nations Office at Geneva:

"I. Overall assessment

The current draft convention takes account of and accommodates the concerns voiced by Germany in 1991, for example in the much more precise definition of forced disappearance in article 1. But the further development of the definition of 'enforced disappearance of persons' in connection with article 7 (1) (i) and (2) (i) of the Statute of the International Criminal Court also ought to be taken into account here.

Nevertheless even the amended version contains numerous articles to which Germany cannot subscribe as they would require unconstitutional amendments to the law or would be contrary to the fundamental principles of German law.

Moreover, there are still general doubts about the whole point of the planned convention, as forced disappearance is already inadmissible in all States and it is questionable whether an additional international commitment to prohibit forced disappearance can actually improve the situation.

II. Individual points

(a) Article 1

There are no reservations as to the defined offence of forced disappearance constituting a crime of intention. However, at least according to the wording used, it also seems to be possible for it to be a crime of negligence. This possibility should be excluded. The question as to how long information about the fate of the disappeared person has to be lacking to constitute an offence remains open.

(b) Article 2

The term 'participants' in article 2 (1) and at other points in the draft is difficult to reconcile with German law, which knows either perpetration or participation as referred to in article 2 (1) (a) and (1) (b).

Germany thus proposes simply using the term 'perpetrators' in these articles and deleting 'participants'.

The scope of participation in article 2 (1) is much too broad if, for example, participation in just one element of the offence defined in article 1 is to be made punishable. Participation needs to be limited to elements of the offence constituting a comparable degree of injustice. The fact that the participant knew or ought to have known about the perpetration of the principal offence cannot alone be enough to establish the intent to instigate or be an accomplice. Intentional action ought to be a prerequisite for participation.

In article 2 (2) it is neither clear for whom the legal duty to act to prevent is to exist, nor how the obligation has to be fulfilled. An 'everyman's duty' which in addition refers to an indefinite number of offences extends criminal liability in an unacceptable fashion.

(c) Article 5

Insofar as the States Parties are called upon to impose an appropriate punishment commensurate with the extreme gravity of the offence, they should be given sufficient scope to devise their own solutions. For example, under German law article 239 of the Criminal Code (deprivation of liberty) is a misdemeanour not a felony.

(d) Article 7

Measures under article 7 (1) are only permissible if the State authorities are competent to prosecute. The convention itself cannot establish such competence.

(e) Article 8

Some of the areas of cooperation listed in paragraph 2 come within the ambit of national investigation procedures or the averting of danger, rather than international legal aid in

criminal matters. There are therefore other prerequisites to be fulfilled in each particular case. This ought to be made clear by inserting a phrase such as 'the greatest possible measures of legal assistance'.

(f) Article 10

Article 10 (2) ought to refer not just to the immunities granted by the Vienna Convention on Diplomatic Relations but also to the immunity of members of parliament.

Germany rejects the broad legal standing of interested persons, as well as of national and international organizations, as envisaged in article 10 (4). Paragraph 4 ought to be deleted as it interferes too much in the law of criminal procedure of the States parties.

(g) Article 11

Germany cannot subscribe to this article as the organs of criminal prosecution, although independent from political powers, are part of the executive. Germany thus proposes deleting the words 'and independent'.

Mandatory access of criminal prosecution organs to all documents without exception, as envisaged in article 11 (3), is not possible. The last sentence of article 11 (3) should therefore be deleted.

Neither German law of criminal procedure nor presumably the law of averting danger grants such a comprehensive right of access as laid down in article 11 (4), irrespective of national security interests. This is also true of article 20 (2) and article 21 (6).

Such a far-reaching duty to furnish information as contained in article 11 (6) is not possible on data protection grounds.

Germany cannot accept the aforementioned provisions as they stand.

(h) Article 12

Article 12 concerning the extradition of persons charged with forced disappearance under the convention is not compatible with the Basic Law as far as the extradition of German nationals is concerned. Following the amendment to article 16 (2) of the Basic Law planned in connection with the ratification of the Statute of the International Criminal Court, it will only be possible to extradite German citizens within the European Union or if they are being transferred to an international court. The general obligation to extradite laid down in the aforementioned article is thus not possible for Germany.

Germany proposes exempting one's own nationals explicitly from the extradition obligation in article 13.

There are reservations about article 12 (2) and (3) as the bilateral extradition treaties and the multilateral conventions are not concerned with the offences as such but with the

envisaged punishment. This solution based on the resulting punishment is in principle preferable to a solution geared to the nature of a crime. Germany cannot therefore commit itself to this article as it stands.

(i) Article 13

Cases in which there is no request for extradition cannot establish jurisdiction. This is unnecessary, too. The phrase 'or is not requested to do so' should thus be deleted.

(j) Germany cannot accept article 14 because of the basic right of asylum in Germany anchored in article 16 (a) of the Basic Law. If the independent authorities and/or the courts grant asylum in Germany, the Federal Government has no political scope to transfer accused persons as called for in the draft convention.

Article 14 sentence 2 suggests an individual may be deemed unworthy of asylum. This is a concept alien to German asylum law.

Asylum law questions are not related to the issue of forced disappearance. Germany therefore suggests that article 14 of the draft convention be deleted.

(k) Germany cannot accept article 15 of the draft convention. Under article 15 (1) of the draft convention, no State party shall expel, deport, return or extradite a person to another State if there are grounds for believing that he/she would be in danger of being subjected to forced disappearance or any other serious human rights violation in that State. Under paragraph 2, the competent authorities, when determining whether such grounds exist, also have to take into account whether a pattern of gross, systematic or widespread violation of human rights is known to exist in the State concerned. We believe that only people whose life, limb or liberty is in concrete danger ought to be protected from deportation. The abstract danger of serious human rights violations should not suffice. Moreover the rights protecting a person from deportation ought to be limited to danger to life, health and liberty.

Also the issue of repatriation/deportation does not belong in the system of a convention against forced disappearance. Article 15 should thus be deleted.

(l) Article 16

The statute of limitations ought to be dependent on the envisaged punishment. The non-limitation provision in paragraph 1 ought to be deleted. The statute of limitations for the prosecution of criminal offences ought to start on completion of the offence. Establishing other starting points ('starting from the moment') breeds uncertainty.

(m) Article 18 (4)

The falsification or suppression of documents, as well as causing the recording of false declarations, is included in all criminal law systems. Further regulations seem unnecessary. The relevant phrase in paragraph 4 should thus be deleted, perhaps even paragraph 4 in its entirety.

(n) Article 21

Those subject to the obligation to provide information have to be more carefully defined. Withholding information can only be a punishable offence under paragraph 1 if statutory obligations to provide information are contravened. It is conceivable that it is not at all in the interests of a prisoner awaiting trial, who has to be presumed innocent, if his detention is made known to third parties, in particular to avoid the associated stigma effect.

The term 'competent authorities' in paragraph 6 is imprecise. It is a matter of course that access rights have to be granted to persons who are entitled or obliged to visit prisoners or penal institutions for constitutional or professional reasons (for example members of petitions committees, judicial staff or criminal police). Who else will be granted access needs to be specified.

(o) Article 22

Germany cannot support the obligation laid down in article 22 for States parties to maintain and publish centralized registers of detained persons, as this would be impossible to implement under German constitutional law. On the one hand, making available information on detained persons is contrary to the constitutionally recognized right to informational self-determination, which also includes data protection aspects. On the other hand, Germany's federal system means that administration of justice and matters concerning the deportation of persons without residence rights in Germany are dealt with at Land level. The German Government does not therefore have the information required under article 22 at its disposal and cannot compel the Länder to provide such information against their will.

The legitimate interest referred to in paragraph 2 must be made more specific. It has to be taken into account that a prisoner awaiting trial may want to avoid the fact of his imprisonment becoming general knowledge and has a legitimate interest in doing so.

(p) Article 24

There are grave concerns about the wording of article 24 of the draft. On the one hand, the provision clearly wants to go beyond a general declaration of intent and impose an obligation upon States to define specific claims that victims can make. This is evident from article 4 of the draft convention, which obliges the States to provide prompt and appropriate reparation for the damage caused to the victims of a forced disappearance in accordance with article 24.

On the other hand, the provision is still too general and vague for the States concerned to be able to recognize which individual claims they have to accommodate and how far their obligations stretch.

There are no reservations about the restitution of goods illegally taken and the reparation for the harm done as a result of an illegal attack on strictly personal rights such as life.

health, freedom, property or other absolute rights. However individual legal systems have set different parameters for what can be recognized as damage which can be compensated. To take account of the differences between the national legal systems, a sentence should be added which allow claims under the convention only to be made within the general law on civil liability of national legal systems. Article 24 (2) should be supplemented as follows: 'insofar as permitted by the general law on civil liability of the competent court'.

It remains largely unclear what is meant by rehabilitation, satisfaction and the restoration of the honour of the victims. While claims for damages are directed at the perpetrator himself, this probably involves claims against the State.

Finally, it is also unclear what the restoration of honour and reputation involves. Again, this seems to be a claim against the State. It is difficult to imagine what the State can do in concrete terms. A 'moral rehabilitation' is already involved in the criminal conviction of the offender, meaning there is no real need for a separate rehabilitation under civil law. This passage should thus be deleted.

The definition of rightful claimants is far too broad. Under article 24 (3), the victims are not just the disappeared person but also his or her relatives, any dependant who has a direct relationship with her or him and anyone who has suffered harm through trying to shed light on the whereabouts of the disappeared person.

The term 'dependant who has a direct relationship with her or him' is unclear and should be deleted. If people have been injured themselves when searching for the disappeared person they have their own claim for damages, so it is unnecessary for their claim to be pegged on to that of the disappeared person."

F. Guatemala

[Original: Spanish]

By note verbale dated 25 October 2000 the Permanent Mission of Guatemala to the United Nations Office at Geneva transmitted the following comments and observations:

"The State of Guatemala, pursuant to its democratic process and respect for human rights, has undertaken, as government policy, to continue to strengthen its international human rights protection systems with a view to promoting respect for the dignity of human beings under the jurisdiction of States.

To that end, Guatemala endorsed the basic principles of the Inter-American Convention on the Forced Disappearance of Persons, in which it is expressly stated that this despicable practice constitutes an offence against the dignity of the human being. On 28 March 1996, that Convention was approved by Decree 18-96 of the Congress of the Republic, and the instrument of ratification was deposited on 25 January 2000.

In this connection, please find below comments on the text of the draft international convention on the protection of all persons from forced disappearance.

Conceptualization:

Article 1

We think that the definition of forced disappearance should contain the same elements as the Inter-American Convention on the Forced Disappearance of Persons (art. 2), with the addition of the phrase, 'thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees'.

Punishment:

Article 2

This article adds another element to the category of forced disappearance: the situation where the perpetrator knew or ought to have known that the offence was about to be or was in the process of being committed. This factor is part of the theory of characterization or guilt (depending on whether the theory of cause or intention is used), which ought not to constitute a condition for punishment of the offence. The text should be reworded.

Investigation:

Article 4

This article should include the State party's obligation to publicize the offence and its investigation and prosecution, and the victim's right to be kept informed of the same.

Mitigating circumstances:

Article 5

Paragraph 2 of this article establishes the mitigating circumstances of the crime; consideration should be given to the mitigating circumstances set forth in each State's domestic legislation.

Responsibility

Access:

Article 11

Mention should be made of access to places where it is suspected that a disappeared person is to be found, and the guarantees of compulsory observance of domestic remedies, without undue formalities, given the nature of the offence.

Reparation:

Article 24

In paragraph 2 of this article, the content of the reparation should be revised inasmuch as, in accordance with studies by United Nations experts on the subject of reparations (Theo van Boven, Cherif Bassouni and Louis Joinet). reparation includes restitution (restoration of the victims' dignity); rehabilitation; compensation, which should cover damage arising (damnum emergens), lost profits, moral damage and life expectancy; as well as satisfaction and guarantees that the offence would not be repeated, which are fundamental aspects of reparation.

Paragraph 3 of the same article mixes together the victims and the beneficiaries of the reparation. The category of victim should cover the disappeared person and his or her next of kin, who suffer moral and psychological damage as a result of the act. The beneficiary category should include the victims, their heirs, third parties who were dependent on the disappeared person and fulfilled the requirements for receiving a regular contribution and who would presumably continue to do so if the disappearance had not occurred, thus improving their economic situation.

The committee:

Article 25, paragraph 4, of the draft convention provides for the participation of members of non-governmental organizations that enjoy consultative status with the Economic and Social Council. If it were possible, the invitation should be open to each State party's non-governmental organizations, not necessarily internationally recognized, in order to expand the coverage of nationally recognized organizations, leaving the invitation for membership to each member State.

Procedure:

Article 30 of the draft convention does not envisage the option of a friendly settlement. That measure would preclude international responsibility by recognizing national responsibility, giving States a means of defence. Friendly settlements have also yielded positive results in other human rights protection systems.

Some aspects of article 31 of the draft should be revised: paragraph 2 deals with aspects already covered in article 30 (2). Also, the final paragraph of article 31 contradicts article 30 (4) (b)."

G. Kuwait

[Original: Arabic]

By note verbale dated 1 May 2000, the Permanent Mission of the State of Kuwait to the United Nations Office at Geneva provided the secretariat with the following comments:

"(a) Article 5, paragraph 1

This article contains a provision which prohibits imposition of the death penalty on perpetrators of the offence of forced disappearance.

Regardless of the appropriate punishments that States Parties might see fit to prescribe for this offence, the death penalty is a lawful punishment in some States. Consequently, the Kuwaiti authorities propose that the expression 'The death penalty shall not be imposed in any circumstances' be deleted from article 5, paragraph 1.

(b) Article 25, paragraph 4

Article 25, paragraph 4, stipulates that the Secretary-General of the United Nations shall submit a list of the persons nominated for membership of the Committee against Forced Disappearance to the States parties, the relevant intergovernmental organizations and the relevant non-governmental organizations that enjoy consultative status with the Economic and Social Council.

In view of the fact that, under the terms of paragraph 3 of this article, the States parties to the said convention are the only ones entitled to elect the members of the Committee against Forced Disappearance, there is no evident reason to submit a list containing the names of the persons nominated for membership of the said committee to intergovernmental and non-governmental organizations.

Accordingly, the Kuwaiti authorities propose that the expression 'the relevant intergovernmental organizations and the relevant non-governmental organizations that enjoy consultative status with the Economic and Social Council' at the end of paragraph 4 should be deleted.

(c) Articles 29 and 30

The Kuwaiti authorities would like to know the reason why these two articles do not contain a provision stipulating that they apply only to States parties which declare that they recognize the competence of the Committee, as specified in those two articles, following the pattern set in similar conventions.

(d) The draft convention does not contain any provision concerning the settlement of disputes that might arise between States parties concerning the interpretation or implementation of the convention as is the case in some other international conventions relating to human rights. The Kuwaiti authorities therefore propose that an article dealing with this question should be added to the draft convention.

(e) The Kuwaiti authorities also wish to make the following comments on the Arabic text:

(i) Although the term 'offence' is translated into Arabic as 'jarima', which is the term used in the Declaration on the Protection of All Persons from Enforced Disappearance of 1992 and also in this draft convention, it is noteworthy that, in the following provisions of the Arabic version of the draft convention, the term 'offence' is translated as 'jinaya':

The first line of the third preambular paragraph;

The third line of paragraph 1 and the fourth line of article 5, paragraph 2;

The second and fifth lines of article 16, paragraph 2;

Article 17, paragraph 2;

The last line of article 18, paragraph 4;

Accordingly, the Kuwaiti authorities propose that, in the above-mentioned paragraphs, the term 'jinaya' should be deleted and replaced by the term 'jarima'.

(ii) The translation of the expression 'or of any constituent element of the offence' in article 2 as 'ayyi fi' lin yushakkilu ruknan min arkan hadhihi-l-jarima' conveys an ambiguous meaning, particularly as the term 'rukn' is used in Arabic to refer to the material or moral elements in the absence of which the act does not constitute a punishable offence. The Kuwaiti authorities therefore propose that the expression contained in the English version of the above-mentioned paragraph should be translated as 'ayyi fi' lin mukawwinin lil jarima'(any act constituting the offence), so that article 2, paragraph 1 would read as follows [translated from Arabic]: 'The perpetrator of and other participants in the offence of forced disappearance or of any act constituting the offence as defined in article 1 of this convention, shall be punished. The perpetrators or other participants in an act constituting an offence as defined in article 1 of this convention ... etc.'

(iii) In article 22, paragraph 5, the word 'qa' imaat' is used instead of the more correct plural 'qawa' im'."

H. Portugal

[Original: French]

The Permanent Mission of Portugal to the United Nations Office at Geneva transmitted the following comments by note verbale dated 22 October 2000:

"Regarding the suggestions submitted by the International Commission of Jurists on the draft international convention on the protection of all persons from enforced disappearance, Portugal made some not unfavourable comments on the draft international convention, pursuant to Commission on Human Rights resolution 1999/38. It made the same observations under paragraph 9 of Commission resolution 2000/37.

There seems to be no immediate objection to the convening of a meeting to consider the content of the draft convention, nor to the setting up of an inter-sessional working group to consider the convention, subject to conditions agreed upon at the meeting.

Regarding paragraph 9 of Commission on Human Rights resolution 2000/37, Portugal made a number of comments regarding Commission on Human Rights resolution 1999/38 on the question of enforced or involuntary disappearances. It concluded that Portuguese legislation and the draft convention were not incompatible and that the draft convention contained a set of extremely valuable provisions. Given that the draft convention has not been amended since then, Portugal makes the same observations pursuant to Commission on Human Rights resolution 2000/37 (para. 9).

The question:

The United Nations Secretary-General has asked all Member States to submit their comments on Commission resolution 1999/38. In this resolution, the Commission highlights the problems presented by enforced or involuntary disappearances not only for the victims themselves but also for their families and, in particular, children. It urges States to participate in the activities of the Working Group on Enforced or Involuntary Disappearances; it expresses its gratitude for any assistance that Governments may have provided and invites them to take legislative, administrative and other steps on the domestic front in order to combat the practice of enforced or involuntary disappearances. Furthermore, it asks States to submit their views on the draft international convention on the protection of all persons from enforced disappearance.

These points appear to be quite broadly established. No State which defends human rights is likely to disagree with them. The best way to respond to the Secretary-General's request would seem to be to express an opinion, however brief and concise, on the draft convention.

However, it should be stressed that the independence of the courts and the autonomy of the government procurator's office are guaranteed under Portuguese law, thus avoiding any confusion between the political branch and the Judiciary, that recent legislation provides for the protection of witnesses in criminal proceedings (Law No. 93/99 of 14 July) and that abduction is severely punishable under the Penal Code (which contains provisions on crimes against personal liberty under articles 153 et seq., abduction under article 160 and hostage-taking under article 161). The Portuguese Constitution, Judiciary, legal and penal systems strongly condemn enforced disappearances and, given the existence of the rule of law, it may be said that the problem does not exist in Portugal.

The draft convention

Introductory provisions:

The draft convention gives a general description of enforced disappearances, which, in paragraph 5 of the preamble, are said to constitute a crime against humanity. The situation during armed conflicts as well as in times of peace is provided for (para. 8), a strong link is established between enforced disappearances and torture (paras. 10 and 11), and disappearances brought about by agents of the State or persons acting with the authorization of the State are covered in paragraph 11.

It should be noted that General Assembly resolutions 47/133 of 18 December 1992 and 53/150 of 10 March 1999 distinguish between enforced disappearances brought about by the State and those perpetrated by persons unconnected with the State. This distinction is taken up in article 1, which defines enforced disappearance as a disappearance brought about either directly or indirectly by the State but does not exclude punishment for enforced disappearances 'other than those referred to in paragraph 1'.

The draft convention is divided into three main parts: Part I, the operative part; Part II, concerning the functioning of the Committee against Forced Disappearance and complaint mechanisms; and Part III, concerning entry into force, signatures and ratification.

Operative part:

(a) Definition

Article 1, paragraph 1, defines enforced or involuntary disappearance as:

> The deprivation of a person's liberty,
>
> Brought about by agents of the State or with the State's authorization,
>
> Followed by an absence of information or concealment of the fate of the disappeared person.

Thus, enforced or involuntary disappearances, for the purposes of the convention, are always those which are linked to a State, even though this link becomes tenuous, particularly at the stage of punishing the agent, because at this point, the perpetrator is not associated with the State on behalf of which he acted.

(b) Criminal law

The draft convention is very close to criminal law, particularly when, in article 2, it provides for the punishment of the perpetrator, as well as any participants and accomplices; when it provides for the punishment of an offence and an attempted offence

and when it also provides punishment for non-fulfilment of legal duty (non-fulfilment of legal duty to act to prevent offences, including enforced disappearances, as stipulated in article 10 of the Portuguese Penal Code (Decree-Law No. 48/95 of 15 March).

Of all the United Nations human rights conventions, this convention may be the most advanced in terms of the nature of its provisions, its decision-making methods and its punishments (the criteria for which are left for States to decide, even though when the Convention defines the massive practice of enforced disappearances as a crime against humanity, it suggests conferring jurisdiction on the International Criminal Court when the Rome Convention comes into force, or on another international tribunal, such as those already in existence for Rwanda and for the former Yugoslavia or that could be established in connection with another specific problem arising in the future).

(c) Renouncing the practice of enforced disappearances

Pursuant to article 4, States ratifying the convention assume an important undertaking to stop the practice of enforced disappearance and to renounce it in future.

Article 5 prohibits the application of the death penalty to the person responsible for an enforced disappearance. The Constitution of Portugal likewise prohibits the use of the death penalty (art. 24, 'Right to life', para. 2, 'in no case shall the death penalty be applied').

(d) International judicial cooperation

Article 8 provides for international judicial cooperation between States in connection with the offence of enforced disappearance, in order to make it as easy as possible to bring the perpetrator of such disappearances to trial. This should be read in conjunction with article 12, 'Forced disappearance shall not be considered a political offence for purposes of extradition', and the agent must be extradited if a request for extradition is made. If such a request is not made, legal proceedings shall take place in the State where the agent is arrested (art. 13). Lastly, political asylum is not to be granted to the perpetrator of an enforced disappearance (art. 14).

Portuguese law is consistent with these provisions. Pursuant to article 7, paragraph 2, of Law No. 144/99, of 31 August, crimes against humanity are not considered political crimes. Portugal would therefore extradite any perpetrator of such crimes found in Portuguese territory if a request for extradition was made.

It is clear that these provisions have great contemporary relevance. They are reminiscent of the efforts that have been made, and are still being made, to establish an International Criminal Court; of the definition, which corresponds to the general principles of international public law, of crimes against humanity and the need for them to be punished (see Kai Ambos, Völkerrechtliche Bestrafungspflichten, who concludes that there is a duty to punish resulting from these general principles); and of a case involving a request for extradition for crimes against humanity, including enforced disappearances, namely, the Pinochet case.

It should be noted that no statutory limitation shall apply to criminal proceedings concerning these crimes (art. 16) and that perpetrators shall not be allowed to benefit from amnesty (art. 17).

(e) Victims' guarantees

With regard to victims' guarantees, attention is drawn to the provisions of article 9 (that the order of a superior authority may not be invoked to justify an enforced disappearance, which means that it is no longer possible to apply the well-known criteria of Claus Roxin, the German criminal jurist, who proposed, with regard to the crimes against humanity committed between 1939 and 1945, that whoever was responsible for giving the order should be sought in order to punish the 'true' agent of a given crime; this approach which, as we have seen, does not exclude the person giving the order committing an offence, does in fact seem to correspond to a recent trend which consists in punishing agents for their share of the responsibility and appears to make good sense in the light of the fact that whoever carries out an order may also commit abuses and later attribute them to the order given) and to article 10.

Under article 10, the establishment of courts of special jurisdiction is forbidden: victims of possible enforced disappearances may not be tried in courts which lie outside the normal legal system. This provision is another indication that such an interpretation should inform the reading of those provisions of the convention which may seem ambiguous, in other words, that all the acts constituting an enforced disappearance are punishable: detention by agents acting on some kind of order from the State, trial by a court of special jurisdiction lying outside the ordinary legal system, acts of torture carried out on the detainee, his murder, possibly disguised as a death sentence carried out as a result of improbable legal proceedings of questionable fairness and impartiality, and so on.

Another guarantee, consistent with the principle of forbidding cruel, inhuman or degrading treatment, is contained in article 15 of the convention: the risk of enforced disappearance is enough to prevent expulsion or forced return to a country considered to be unsafe in this regard.

The provisions of Portuguese law prohibiting extradition in cases of this sort deserve specific mention. Article 6 of Law No. 144/99, of 31 August, defines the circumstances in which extradition may be refused. Such circumstances include the death penalty, life imprisonment and other serious sentences, although the existence of such sentences does not necessarily prevent extradition to the countries in question if the requesting State gives an undertaking not to apply them.

An extradition request may also be refused when it is made in connection with a political offence as defined by Portuguese law, or with a military crime not provided for under ordinary criminal law. Aut dedere, aut judicare ...

We can therefore conclude that the Portuguese legal system is consistent with the important guarantees provided by the convention.

The draft convention also contains provisions concerning the enforced disappearance of children and efforts made by States parties to identify, search for and locate the child, guaranteeing the return of minors to a State other than that in which they have been detained.

A series of provisions relate to the training of public officials, the existence of a prompt judicial remedy as a means of determining the situation of the victim, the States parties' rigorous determination of their laws regarding the deprivation of liberty, judicial guarantees of all kinds, such as application for habeas corpus and the continuous presence of a judge throughout proceedings, the definition of the conditions and rules of release and compensation for the victims of enforced disappearances (arts. 19-24).

With regard to Part I of the convention, which we have called the operative part, Portugal, through its constitutional, legal, judicial and penal provisions, offers all the necessary guarantees to prevent enforced disappearances in the territory under its jurisdiction and is in a position to support the draft convention.

Complaint mechanisms:

Like other human rights instruments, the convention establishes a committee (arts. 25 et seq.), and a system under which States parties submit reports, with the committee being authorized to receive relevant information from any persons or bodies (art. 28) and to decide to make inquiries or visits to the State concerned. Other States parties may submit complaints regarding the State in question, as may any person or group of persons, as stipulated in article 30.

Under article 31, the Committee may, on its own initiative, undertake any effective procedure to seek and find disappeared persons. It may also do so at the request of a State party, an individual, a group of individuals or a non-governmental organization.

It should be pointed out - and in this respect the convention breaks new ground - that no declarations are required from States parties to recognize the committee's competence, which derives from the convention and not from the States parties' recognition of existing complaint mechanisms. Consequently, reservations 'the effect of which would inhibit the operation of any of the bodies established by this convention' are not permitted (art. 36).

Without wishing to comment on the next phase in the elaboration and adoption of this convention, we can say that at this stage Portugal would be in a position to support it.

Since the mechanisms involved are identical to those of other conventions, and since reservations are not permitted, we will not deal in detail with Part III of the Convention (entry into force, signatures and ratification).

Conclusions:

The convention is still only a draft. There is still a long way to go before it is adopted. It is a convention which should be extremely valuable in the context of the numerous conflicts occurring throughout the world. It constitutes part of a modern framework for international criminal law and will probably be very effective in conjunction with the new International Criminal Court. It will form a set of rules concerning the practice of enforced disappearance and mark a step forward, particularly in terms of the powers of the committee, in relation to other conventions, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which does not provide for visits to prisons without prior consent and which, like all the other conventions, requires declarations to be made before competence is attributed.

For all the above reasons, this convention seems to be an extremely valuable one."

I. Qatar

[Original: English]

The Permanent Mission of the State of Qatar to the United Nations at Geneva informed the secretariat, by note verbale dated 15 December 1999, that it had no comments or any information on matters relating to the draft convention.

Annex II

COMMENTS PROVIDED BY THE WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES

[Original: English]

The Working Group on Enforced or Involuntary Disappearances, having met in New York in its sixtieth session from 24 to 27 April 2000, adopted the following comments:

"The Working Group welcomes the efforts of the Sub-Commission to prepare this draft and appreciates that the draft international convention contains many of the recommendations which the Working Group for many years has submitted to the Commission on Human Rights and Governments.

The draft international convention is a very comprehensive and carefully drafted document based on, but at the same time clearly going beyond, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and the Declaration on the Protection of All Persons from Enforced Disappearance of 1992 (the Declaration). It consists of a preamble and three parts. Since the Working Group agrees with the general approach and most provisions of the draft international convention, it will restrict its comments only to those provisions which merit its attention.

Part I contains the substantive provisions and focuses primarily on the individual criminal responsibility of the perpetrators of forced disappearance, as well as on obligations of States parties to prevent such crime. While the preamble recognizes, similarly to article 1 (1) of the Declaration, that any act of forced disappearance constitutes an 'offence to human dignity', article 3 (1) stipulates that the systematic or massive practice of forced disappearance constitutes a 'crime against humanity'. This change as compared to the Declaration correctly takes into account recent developments in international law, notably the Inter-American Convention on Forced Disappearance of Persons of 1994 and the Rome Statute of the International Criminal Court of 1998, both of which should, in the opinion of the Working Group, be referred to in the preamble.

The principle of universal jurisdiction (art. 6 (1) (b) in conjunction with articles 7 and 13) is drafted in a much clearer manner than in comparable treaties, including the Convention against Torture. Some provisions of Part I seem somewhat repetitive, as e.g. the obligation of States parties to grant their investigating authorities full access to places where victims of forced disappearance might be held, to be found in articles 11 (4), 20 (2) and 21 (6).

The principle of non-refoulement in article 15 seems to go beyond existing international law by prohibiting the expulsion or extradition of a person to a State where forced disappearance or 'any other serious human rights violation' might be inflicted on him or her. This expression seems fairly vague and might be interpreted to include also violations of human rights, such as personal liberty, freedom of expression or procedural and other guarantees presently not covered by the non-refoulement principle.

The Working Group particularly welcomes the obligation of States parties pursuant to article 18 to prevent and punish the abduction of children whose parents are victims of forced disappearance and of children born during their mother's disappearance. Together with the general rule of returning such children to their family of origin, the explicit possibility of annulling any adoption which has arisen from a forced disappearance, and the principle of the best interest of the child taken from the Convention on the Rights of the Child, this obligation provides an appropriate remedy to one of the most serious phenomena in the context of forced disappearances.

In article 22 (5), the draft international convention stipulates the obligation of States parties to establish competent national authorities to carry out preventive visits to places of detention, similar to those envisaged in the European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment of 1987 and the draft Optional Protocol to the United Nations Convention against Torture. The Working Group proposes that such regular visits shall be carried out by national authorities which are not only competent but also independent from the executive branch.

Finally, the Working Group wishes to express its concern at the formulation used in article 23. What does it mean that States parties shall guarantee that detainees are released 'in condition in which their physical integrity and their ability fully to exercise their rights are assured'?

Part II contains the international monitoring provisions, i.e. the establishment of a Committee against Forced Disappearance and its task to carry out five different monitoring tasks: the examination of State reports, of inter-State and individual communications, as well as the carrying out of the inquiry and tracing procedures.

The Working Group remains doubtful about the wisdom of creating a further treaty monitoring body. It would have preferred if these tasks were assigned to one of the existing treaty monitoring bodies, in particular the Committee against Torture or the Human Rights Committee. If one, however, wishes to create another body, one should take into account the negative experience of bodies with only 10 members, such as the Committee against Torture or the Committee on the Rights of the Child. The respective provision in article 25 (1) should, therefore, provide for at least 18 members.

In the provisions regulating the nomination and election of committee members, the Working Group recommends not to exclude the possibility of States parties nominating persons who are not their own nationals. The combined reading of article 25 (2) and (5) leads to the unfortunate conclusion that an excellent committee member cannot be re-elected if his or her own Government (which might have changed in the meantime) refuses re-nomination. Similarly, article 25 (6), in the opinion of the Working Group, seems to put too much attention on the right of individual States parties to nominate or even 'appoint' their own experts. There is no reasonable justification why, in the event of death or resignation of a committee member, only the State of his or her nationality should have the power to nominate a successor.

The draft international convention does not establish optional procedures. On the other hand, article 36, which prohibits any reservation to Part I, seems to allow for a possibility of 'opting out' of four of the five procedures (not the tracing procedure in article 31), including the State reporting procedure in article 27. In other words: any State party could make a reservation to the establishment and procedures of the committee unless such a reservation 'would inhibit the operation of any of the bodies established by this Convention'. This rather peculiar provision is fairly unclear and needs further interpretation. In view of the highly sensitive nature of treaty body interpretation of the power of States parties to make reservations, the Working Group proposes to delete this provision in article 36 and prohibit reservations altogether. If, for political reasons, there should be a need for one or the other optional procedure, one should better state this in the respective articles.

The State reporting procedure in article 27 envisages only first (initial) and supplementary reports at the request of the Committee, i.e. rightly avoids the imposition of periodic reporting obligations. At the same time, it introduces the interesting idea of combining the examination of first reports with a visit to the country. The Working Group wonders why such a possibility is not envisaged for the examination of supplementary reports as well.

The inter-State communication procedure in article 29, notwithstanding minor improvements, still seems to follow the fairly inefficient model of articles 11 to 13 of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 and articles 41 and 42 of the International Covenant on Civil and Political Rights of 1966. The Working Group cannot understand why one wishes, 10 years after the end of the Cold War, to reduce the powers of the committee to a mere arbitration and conciliation function, with only a brief final report on the facts and submissions of the States parties as envisaged in article 29 (h) (ii), rather than to authorize it to decide on the alleged violations as in the individual communication procedures or in comparable inter-State complaints procedures under the European Convention on Human Rights or relevant ILO treaties.

With respect to the individual communication procedure, the Working Group particularly welcomes the right of groups and non-governmental organizations to submit communications as stipulated in article 30 (1) and the power of the Committee, envisaged in article 30 (4), to organize hearings and investigative missions. The traditional United Nations terminology dating from the time of the Cold War ('communications' and 'views' rather than 'complaints' or 'petitions' and 'decisions') sounds, however, somewhat outdated in a human rights treaty of the twenty-first century.

Article 31 regulates the traditional tracing procedure as it is presently carried out by the Working Group. Although this procedure is primarily of a humanitarian nature as stipulated in article 31 (4), it may overlap or even come into conflict with the inquiry procedure in article 28. This is, however, a general problem which arises if one body is entrusted with both monitoring and humanitarian functions. The Working Group wishes to point out that it might be wise to specify whether this tracing procedure also applies to

international and non-international armed conflicts (in view of the special competencies of the International Committee of the Red Cross under the Geneva Conventions), as well as to disappearances allegedly carried out by non-State actors.

In conclusion, the Working Group wishes to reiterate its gratitude to the Sub-Commission for having prepared such an excellent draft and expresses its hope that the Commission on Human Rights will speedily finalize the drafting process. It welcomes the idea of the Commission, as expressed in paragraph 9 of its resolution 2000/37 of 20 April 2000, setting up an inter-sessional working group in charge of considering and finalizing the draft convention. Members of the Working Group are, of course, happy to make their expertise available to this inter-sessional working group if so requested by the Commission.

The Chairman of the Working Group wishes to add his personal opinion that in view of the highly political nature of forced disappearances, he considers the strengthening of the Working Group as the relevant thematic mechanism of the Commission on Human Rights as more efficient than adopting another legally binding human rights treaty with quasi-judicial monitoring procedures."

Annex III

COMMENTS AND INFORMATION PROVIDED BY
NON-GOVERNMENTAL ORGANIZATIONS

A. International Committee of the Red Cross

[Original: English]

By letter dated 31 October 2000, the Deputy Head of the Legal Division of the International Committee of the Red Cross (ICRC) transmitted the following comments:

"In our view, the text of the draft convention provides a solid starting point for discussions on the development of an international legal framework aimed at deterring and putting a stop to the practice of enforced disappearance. Many reasons could be enumerated in support of elaborating the text of such a convention, among which is the fact that there is currently no universally binding international instrument on enforced disappearances, even though the practice continues unabated in many parts of the world.

Moreover, existing international treaties - while dealing with some aspects of the phenomenon - fail to comprehensively address the obligation of States to prevent, investigate and punish acts constituting enforced disappearance and requiring international cooperation in the fight against this practice.

Finally, the Rome Statute of the International Criminal Court prohibits enforced disappearances when committed on a 'widespread or systematic basis' as a crime against humanity, but does not address instances of enforced disappearance that do not cross that threshold.

ICRC believes that an international convention on enforced disappearances could be complementary to its almost daily efforts to prevent and stop this practice in situations of armed conflict. One of the issues that could be addressed in further work is how to establish a link between the text of the draft convention and the corresponding provisions of international humanitarian law and the ICRC mandate in the application of this body of law.

ICRC believes that the establishment of an intersessional working group to consider the text of the draft convention would be a good way of moving the debate forward expediently. We look forward to working constructively with the intersessional working group if and when a decision on its creation is reached."

B. American Association of Jurists

[Original: Spanish]

By letter dated 4 October 2000, the American Association of Jurists provided the secretariat with the following comments, prepared on 24 December 1998:

"Article 1. Paragraph 2 of this article unduly extends the scope of forced disappearance, which is a specific penal offence defined in paragraph 1, to other completely different offences, such as criminal kidnappings, committed by individuals, which are covered in national penal legislation. Paragraph 2 should be deleted, since it tends to attenuate the specific nature of the offence addressed in the draft (forced disappearance is brought about by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State).

Article 2, paragraph 1. For the sake of clarity, it would be preferable to refer to a 'constituent act' rather than a 'constituent element'. The phrase 'given the circumstances of the case' should be added after 'ought to have known', so that the liability arising from the first part of the sentence rests on objective elements.

Subparagraph (a): encouragement is covered by the term 'incitement', which is an independent act consisting in generic incitement to commit offences, not to commit a specific offence. When referring to a specific offence (in this case the forced disappearance of persons), it is preferable to use the term 'instigation'. The references to 'incitement or encouragement' should therefore be deleted from the subparagraph.

Article 3. Whether a crime constitutes a 'crime against humanity' depends on the gravity of the crime in itself and not on its 'systematic or massive practice'. In other words, the distinction established in article 3 does not make sense. This article should be deleted or should be changed to read simply: 'Forced disappearance of persons constitutes a crime against humanity'.

Article 4, paragraph 1 (a). The fact that States ought not to practise, permit or tolerate offences is obvious. Subparagraph (a) should be deleted accordingly.

Article 5. The part of the article that draws a distinction between forced disappearance as defined in article 1 and that defined in article 3 should be deleted, since, as was observed under article 3, this distinction is pointless.

Article 6. This article fails to refer to the power of States to establish jurisdiction in cases where the accused or the victim are nationals of that State, regardless of whether the accused is in the territory of the State or not, as established in many national legislations, in the Inter-American Convention on the Forced Disappearance of Persons and in the Convention against Torture. It was precisely on the basis of this provision, which has been omitted from the draft, that the Argentine Captain Astiz could be tried and sentenced in absentia in France and that proceedings were being held in Spain, Italy and other countries against Pinochet and against Argentine military staff.

A provision similar to that contained in article IV (b) and (c) of the Inter-American Convention and article 5 (c) of the Convention against Torture should be added to this article.

Article 7. The phrase 'take all necessary measures to ensure the continued presence of that person in the territory and if necessary' should be deleted, since the only effective way of ensuring the presence of the suspect is to take him or her into custody.

Article 16. This article should be amended in the light of the comments made regarding articles 3 and 5. The crime of forced disappearance is not subject to statutory limitation insofar as forced disappearance is considered to be a crime against humanity. If not, the periods of limitation should be calculated as indicated in the second part of paragraph 2 of the article.

Article 17. Paragraph 2 does not make sense. The seriousness of the offence should be taken into account for the purposes of adjusting the application of a penalty. Pardon is not adjustable: it is either granted or not granted. This paragraph should say: 'In view of the seriousness of this offence, no pardon shall be granted to its perpetrators'.

Article 18, paragraph 1. It is an obvious fact that States must prevent the perpetration of offences and must punish those which have been perpetrated. This paragraph should read:

> 'States parties shall take all necessary and appropriate steps to search for and identify children whose parents are victims of forced disappearance and children born during their mother's forced disappearance who are presumed to have been abducted by third parties. The child will be returned to his or her family of origin ("as a general rule" to be deleted). In the event of rightful adoption, the child may be allowed to remain with its adoptive family, subject to the consent of the child and the family of origin.'

Paragraph 3 of the article should be amended in the light of the comments made with regard to paragraph 1, that is, allowing rightful adoptions to be confirmed with the child's consent and that of the family of origin.

In conclusion, the draft has its good points, but also shortcomings, in terms of legal technicalities and substance. It should be revised by a specially constituted working group."

C. Amnesty International

[Original: English]

By letter dated 26 October 2000, the Deputy Secretary-General of Amnesty International provided the secretariat with the following comments:

"Amnesty International considers it to be important that a strong convention text is adopted, especially since the number of enforced disappearances has not declined but has in fact risen significantly in a number of countries, notably Algeria and Burundi. The situation in Colombia remains critical.

The draft convention advances the international protection of victims of 'disappearances' and provides a comprehensive and integral approach to the problem. It incorporates important means to remedy 'disappearances' which have not been covered in existing human rights instruments. For example, the draft convention provides detailed rules against 'disappearance'. It seeks to combat impunity for 'disappearances' by listing enforced disappearance, its instigation, conspiracy to commit the crime of 'disappearance', and failure in the obligation to investigate, prevent and punish 'disappearances' as crimes subject to universal jurisdiction. Its systematic or massive practice is treated as a crime against humanity. Furthermore, the draft convention establishes concrete obligations for States to prevent 'disappearances' and to impose sanctions under their national legislation. The draft convention also creates a mechanism to monitor implementation of the convention and to deal with communications by individuals or groups. Moreover, the draft convention requires States to make the abhorrent practice of abducting the children of persons who have 'disappeared' a specific criminal offence, and specifically welcomes the right to reparation of the victims of 'disappearance'.

Amnesty International attaches the greatest importance to the early adoption of a strong text which incorporates all the above elements. It underlines the need to establish an inter-sessional working group, with wide and active participation of IGOs, NGOs and relevant experts who can contribute to the debate to ensure that this important international instrument is adopted in a form which provides the strongest protection to victims and potential victims of 'disappearances'."

D. Association of Families of Prisoners and Disappeared Saharans

[Original: Spanish]

By letter dated 26 October 2000, the Chairperson of the Association of Families of Prisoners and Disappeared Saharans (AFAPREDESA) transmitted the following comments:

"We are very hopeful that the Commission on Human Rights will adopt, as soon as possible, the convention on enforced disappearances. In the view of AFAPREDESA, the adoption of that convention will undoubtedly help to banish almost completely the crime of enforced disappearance, which has caused so many victims and so much anguish for years, in total impunity.

The United Nations now has an unprecedented opportunity to fight effectively against the cruel and degrading acts that have marked the end of the millennium. This is the only way of allowing human beings to feel protected from this internationally condemned practice. Having examined the draft convention on enforced disappearance in detail, AFAPREDESA fully endorses its contents so that all people may have recourse to an effective mechanism in the struggle against the horrendous crime of enforced disappearance.

We also appeal to all States to endorse the convention, which constitutes a historic step in the fight totally to eliminate enforced disappearances."

E. Latin American Federation of Relatives of Disappeared Persons

[Original: Spanish]

By letter dated 27 October 2000, the President of the Latin American Federation of Relatives of Disappeared Persons (FEDEFAM) provided the secretariat with the following comments:

"As a regional organization comprising 19 associations of relatives of disappeared detainees in 11 Latin American countries, FEDEFAM has been one of the main creators and promoters of the draft convention currently under consideration by the Commission on Human Rights. In the regional sphere, during the 1980s and 1990s we pressed for, and achieved, the adoption of a regional instrument on the same subject: the Inter-American Convention on Forced Disappearance of Persons, approved in Belém do Pará (Brazil) in 1994.

(a) The direct and personal commitment of the High Commissioner for Human Rights is essential in order to ensure that this instrument provides protection for victims. On the basis of our experience, we consider it vitally important that the High Commissioner should actively and personally participate in promoting this draft vis-à-vis the States Members of the United Nations, in order to ensure that the thousands of persons affected by this crime against humanity throughout the world have an effective means of protection, which today does not exist. This means that thousands of families remain in a state of complete legal and human defencelessness vis-à-vis those responsible for their suffering.

(b) A convention on enforced disappearance is an urgent necessity for mankind, inter alia, for the following reasons:

(i) Because of the continuation of this practice worldwide and the increase in the number of regions affected.

It is a fact that, far from being eradicated, enforced disappearances are continuing and have spread to a number of continents; they are motivated by various forms of discrimination, a fact which dramatically increases the number of victims and geographical regions affected.

According to the most recent report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2000/64), in 1999 the Group received 300 new reports relating to Algeria, Belarus, Brazil, China, Colombia, the Democratic Republic of the Congo, Ethiopia, Honduras, India, Indonesia, Iran (Islamic Republic of), Jordan, the Libyan Arab Jamahiriya, Mexico, Morocco, Nepal, Pakistan, the Philippines, Sri Lanka, the Sudan, Tunisia, Turkey and Uzbekistan. In addition, in Latin America during the year 2000, FEDEFAM has initiated urgent proceedings in an attempt to save the lives of persons reported to have disappeared in Guatemala and Peru.

In the case of Latin America, several of the victims of the reported disappearances are human rights defenders or relatives of disappeared persons belonging to FEDEFAM who have been persecuted for persistently seeking their loved ones, denouncing these crimes or instigating judicial investigations aimed at discovering the perpetrators.

According to United Nations reports and complaints filed by organizations of affected persons in other areas, such as Asia, Africa and the former Yugoslavia, enforced disappearances are currently perpetrated for various reasons, ranging from political motives to racial, ethnic or religious discrimination in internal armed conflicts or in international conflicts, even in nominally democratic regimes. The victims include men, women, children, whole communities comprising important social sectors, peasants, manual labourers, lawyers, students, professionally qualified persons, office workers, academics, clergymen and human rights defenders.

The complaints received by the High Commissioner's Office in Geneva reveal a pattern of enforced disappearances covering the whole world, and not just a few countries in Latin America.

(ii) Because no international treaty exists to protect the rights of the victims of enforced disappearances.

Although enforced disappearance has been recognized by customary international law, and recently by the Rome Statute of the International Criminal Court and the International Tribunals for the former Yugoslavia and Rwanda, and is recognized as a specific international crime, unfortunately there is as yet no treaty mechanism which categorizes the crime and independently protects its victims within the universal system, laying down obligations on States with regard to prevention, protection, punishment and international cooperation. Consequently, victims and relatives have no appropriate legal framework of protection covering the host of rights of which they have been deprived, including: the right to life, the right to recognition of legal personality - including the right to a name, the right to an identity and the right to civil status, the right to security of person, the right to the protection of the law, the right to truth, the right not to be arbitrarily deprived of one's liberty, the right of relatives not to suffer the permanent torture of not knowing the fate or whereabouts of their loved ones, and the right of women, children and men not to become disappeared persons; the right of children born in captivity to disappeared mothers not to suffer enforced appropriation; the right of children who disappeared with their father or mother not to be given for adoption; the right of relatives to have and keep without restriction the body of the disappeared person, the victim's right not to have his body or his identity concealed, the right of the relatives to grieve, and the right of access to effective justice and full redress.

(iii) Because the existence of a legally-binding instrument would effectively pave the way for the eradication of the persistent impunity surrounding enforced disappearance and would enable forceful preventive measures to be taken, such as categorization as a crime in national legislation and hence its prohibition and punishment - measures which are necessary for the effective eradication of this heinous practice.

As the Working Group on Enforced or Involuntary Disappearances has repeatedly stated, there are unfortunately few States which have promoted the inclusion of enforced disappearance in their criminal legislation, while some have only done so at the constitutional level, without removing the legal obstacles preventing the persons affected from securing justice on the basis of their right to be equal before the law.

(c) The Commission on Human Rights is requested, at its fifty-seventh session, to adopt an effective mechanism for the follow-up and study of the draft submitted for its consideration.

In the opinion of FEDEFAM, there is a compelling and immediate need to establish a flexible follow-up mechanism to ensure that the study of the draft convention is taken up with the requisite urgency. We accordingly request the High Commissioner and States members of the Commission on Human Rights, and particularly the Latin American States and members of the European Union, to reach a consensus on the establishment of an inter-sessional working group open to Governments, experts and NGOs to consider the draft convention and to promptly place before the Commission an agreed text for adoption. We trust that our comments will be circulated among States Members of the United Nations and that they will prove helpful when a position is adopted on the subject in the forthcoming deliberations of the Commission on Human Rights."

F. International Commission of Jurists, Human Rights Watch and International Federation of Human Rights

[Original: Spanish]

By letter dated 27 October 2000, the International Commission of Jurists, Human Rights Watch and the International Federation of Human Rights jointly transmitted to the secretariat the following information:

"The International Commission of Jurists, the International Federation of Human Rights and Human Rights Watch consider it of vital importance and indispensable that the United Nations should adopt an international convention to combat effectively one of the gravest human rights violations, namely the enforced disappearance of persons. Our organizations also consider that the draft international convention on the protection of all persons from enforced disappearance incorporates the main obligations and provisions which a convention on this issue should contain. Furthermore, our organizations consider that the Commission on Human Rights should establish, at its next session (2001), an inter-sessional working group to consider the draft convention on the protection of all persons from enforced disappearance (referred to hereinafter as the convention) as a matter of priority.

(a) Forced disappearance, as 'an offence to human dignity' and 'a grave and flagrant violation of ... human rights' and as an offence under international law, is a phenomenon which the international community absolutely must combat and eradicate, equipping itself with the necessary international legal instruments for the purpose.

Forced disappearance is not practised exclusively in any one region of the world, nor is it a phenomenon of the past. On the contrary, forced disappearance is practised in many countries of Africa, Asia, Latin America, Europe (former Yugoslavia) and the Middle East. It has been observed that forced disappearances in many countries are not part of a systematic or massive practice (crime against humanity).

Forced disappearance is a multiple violation of human rights, which is extended in time, whence its permanent or continuous nature. Forced disappearance violates: the right to security of the person, the right to the protection of the law, the right not to be deprived arbitrarily of liberty, the right of any human being to recognition as a person before the law, and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. Forced disappearance also puts the right to life in grave danger, when it does not - as is frequently the case - violate it altogether, and infringes the relatives' right to know the fate and whereabouts of the disappeared person.

One of the most serious characteristics of forced disappearance is that the practice removes the individual from the protection of the law, so that the enjoyment of all the individual's rights is suspended and the victim remains totally defenceless.

But forced disappearance is not the mere arithmetical sum of human rights violations; its practice - whether or not it is systematic or massive - generates a climate of terror both within the family circle of the victim and in the communities to which the disappeared person belongs.

Despite the extreme gravity of forced disappearance, the responses provided by existing international instruments are insufficient. Thus, although most of the rights violated in the event of forced disappearance are protected by the International Covenant on Civil and Political Rights, the Covenant does not establish specific obligations regarding the prevention, investigation and repression of the practice of forced disappearance and international cooperation required to combat and eradicate it. The Declaration on the Protection of All Persons from Enforced Disappearance, while stipulating several of these obligations, is not a legally binding instrument. The Rome Statute of the International Criminal Court addresses only one aspect of forced disappearance, namely international repression of this criminal practice when committed 'as part of a widespread or systematic attack directed against any civilian population', that is, when it constitutes a crime against humanity. But the Rome Statute does not address the problem of forced disappearance when it is not a crime against humanity, nor does it establish specific obligations concerning the repression of forced disappearance on a domestic level.

For these reasons, the International Commission of Jurists, the International Federation of Human Rights and Human Rights Watch are fully convinced of the need to adopt a convention on forced disappearance which will address the phenomenon in all its dimensions and which clearly establishes the obligations of States in terms of prevention, investigation, repression, reparation and international cooperation.

(b) The draft convention addresses basic aspects concerned with prevention, repression and eradication of the practice of forced disappearance which reflect the development of international law and the jurisprudence and doctrines of international bodies.

The draft convention establishes a definition of forced disappearance which covers both agents of the State and agents acting indirectly for the State (art. 1) and which extends to other acts such as instigation, incitement, encouragement, conspiracy, collusion,

concealment, attempted forced disappearance and non-fulfilment of the legal duty to act to prevent a forced disappearance (art. 2). According to the draft convention, forced disappearance in addition constitutes a crime against humanity when it is part of a systematic or massive practice (art. 3).

Where prevention is concerned, the draft convention contains precise provisions regarding deprivation of liberty and places of detention (arts. 21 and 22), investigation and search for disappeared persons (art. 11), legal remedies (art. 20) and non-refoulement (art. 15).

The draft convention establishes clear, specific obligations with respect to repression, such as: the obligation to define disappearance as an independent, permanent offence (art. 5), the obligation to exercise territorial and extraterritorial jurisdiction (art. 6) and obligations with respect to cooperation, mutual assistance and extradition (arts. 7, 12 and 13).

Furthermore, the draft convention establishes major safeguards against impunity, with regard to amnesties and similar measures (art. 17), asylum and refuge (art. 14), due obedience and criminal responsibility of hierarchical superiors (art. 9), statutory limitations (art. 16) and the competence of courts to judge persons suspected of offences of forced disappearance.

The draft convention addresses the serious phenomenon of the appropriation and abduction of the children of 'disappeared' parents, which had never yet been covered by international legislation. Thus the draft convention establishes the obligation to prevent and punish the abduction of children whose parents are victims of forced disappearance and of children born during their mother's forced disappearance; the return of children to their families of origin as a general rule, while taking account of the best interests of the child; the obligation of international cooperation and reciprocal assistance in the search for, identification, location and return of such children; and the obligation to establish in national law the possibility of reviewing adoptions and annulling any adoption arising from a forced disappearance (art. 18).

Lastly, the draft convention establishes a broad definition of the victim of the offence of forced disappearance (art. 24), the obligation to provide reparation for the damage caused by forced disappearance (art. 4) and safeguards guaranteeing the rights to justice and truth for the relatives of disappeared persons (arts. 10 and 11).

(c) The International Commission of Jurists, the International Federation of Human Rights and Human Rights Watch consider that the Commission on Human Rights should establish an inter-sessional working group to consider the draft convention as a matter of priority. Since a draft convention is involved, this procedure would be the most appropriate for examining the text and arriving at agreements and consensuses. The composition of the working group should be broad-based and open in order to provide governments, experts and NGOs with full opportunity to express their views and comments.

Moreover, the conclusion of the work of the Working Group on the draft optional protocols to the Convention on the Rights of the Child should be considered by the Commission on Human Rights as propitious to the establishment of an inter-sessional working group to consider the draft convention, as indicated by the Sub-Commission on the Promotion and Protection of Human Rights in its resolution 2000/18 (para. 1)."

G. Social Justice Committee of Montreal

[Original: English]

By letter dated 23 October 2000, the non-governmental organization Social Justice Committee of Montreal made the following observations:

"Throughout its 25 years of work in partnership with Central American human rights and social organizations, the Social Justice Committee has become acutely aware of the urgent need for international action to end the crime against humanity constituted by the practice of enforced disappearance. This is an awareness that is derived not only from the reading of statistical reports on enforced disappearance but also from meetings with the family members of victims - people who are cruelly torn between mourning the probable murder of a loved one and hoping against hope that their beloved relative may still be alive.

In our human rights advocacy, we of the Committee have observed that the practice of enforced disappearance is often part of a pattern of systematic human rights violations taking place in a context of civil strife or, more recently, illicit drug production. However, its victims are rarely engaged in armed rebellion or in criminal activities. They are almost always social activists and human rights defenders or their families. It is therefore clear to us that enforced disappearance is used as a tool for the destruction of political dissent and social activism.

We are hereby respectfully requesting the United Nations to proceed to the immediate convocation of a special working group to draft an international convention on the protection of all persons against enforced disappearance. We would also urge you to do all that is within the power of the Office of the High Commissioner for Human Rights to ensure the speedy approval of this convention, so that it can become the essential point of reference in a concerted international effort to end the abhorrent practice of enforced disappearances."